

14 APRIL 1948

I N D E X

	<u>Page</u>
Summation by the Defense (cont'd) by Mr. Blakeney	47722
<u>MORNING RECESS</u>	47779
Summation by the Defense (cont'd) by Mr. Blakeney	47780
<u>NOON RECESS</u>	47828
Summation by the Defense (cont'd) by Mr. Blakeney	47829
<u>AFTERNOON RECESS</u>	47890
Summation by the Defense (cont'd) by Mr. Blakeney	47891

Wednesday, 14 April 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE LORD PATRICK,
Member from the United Kingdom of Great Britain, not
sitting from 0930 to 1600; HONORABLE JUSTICE JU-AO MEI,
Member from the Republic of China, not sitting from
1500 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

R
e
i
c
h
e
r
s

&

W
o
l
f

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI and UMEZU who are represented by
5 counsel. The Sugamo prison surgeon certifies that
6 they are ill and unable to attend the trial today. The
7 certificates will be recorded and filed.

8 Major Blakeney.

9 MR. BLAKENEY: Page 118:

10 THE PACIFIC WAR

11 64. It is when we come to consider Mr.
12 TOGO's service in the TOJO Cabinet, during the days
13 which saw the inexorable approach of the Pacific war,
14 that the true significance of the matters which we
15 have considered up to now will become apparent to
16 the Tribunal. It is perhaps a safe assumption that
17 an impartial Tribunal will have been no more impressed
18 by the evidence designed to prove Mr. TOGO's criminality
19 up to this period of his career than were the prosecution
20 who abandoned it as not amounting even to prima facie
21 proof. But this does not mean that my analysis,
22 perhaps seemingly over-elaborate for undisputed evidence,
23 has been without purpose, or that the prosecution's
24 curiously devious and equivocal approach to the entire
25 case of this defendant is a mere aberration. It is

1 precisely in connection with this later phase of Mr.
2 TOGO's career, which the prosecution thought it safest
3 to concentrate on, that these things stand forth in
4 their full significance. For in this matter of the
5 guilt of Mr. TOGO for the Pacific war the prosecution
6 have assumed a tremendous burden of proof, one which
7 might appear to require the production of evidence
8 the clearest and most convincing to sustain; and of
9 such evidence there is none.

10 This burden is nothing less than that of
11 proving that, contrary to all probability and human
12 experience, TOGO Shigenori, having throughout his
13 career fought on the side of honesty and good faith
14 in international dealings, of peaceful friendship
15 among nations, having been the notorious and unrelenting
16 foe of aggression, double-dealing and chauvinism, on
17 17 October 1941 struck his colors--that, repudiating
18 the principles of a lifetime, he ceased his fight
19 against the forces of evil and joined the enemy,
20 entering into a conspiracy with the avowed object of
21 carrying out aggression, war and conquest. We must
22 stop occasionally to remind ourselves--so accustomed
23 have we become to the spirit in which the prosecution
24 have guided these proceedings--that this is a criminal
25 trial before a court; that the usual principles of

proof do hold here; that the Tribunal's presumption
1 of the defendants' innocence until guilt shall have
2 been proved beyond a reasonable doubt does require
3 that the prosecution sustain its burden by proof, not
4 by its unsupported assertion. The prosecution have
5 undertaken a stupendous task in proposing to sustain
6 this burden of proof. To consider whether they have
7 sustained it we go to the evidence.

8 65. When he received the call from the
9 Premier-Designate to serve as foreign minister in the
10 cabinet being formed, Mr. TOGO had been in effect in
11 retirement--with the rank and nominal post of ambassador,
12 but with no assignment--for the year since his return
13 from Moscow, in November 1940³²⁶. The offer of the
14 appointment was not the result of any personal relation-
15 ship between General TOJO and Mr. TOGO, for none had
16 existed--nor was there any intimacy between Mr. TOGO
17 and others of the new ministers. Mr. TOGO was then
18 a senior of the Foreign Ministry, eligible in the
19 normal course for appointment to the highest post in
20 that ministry³²⁷, and we need not trouble to seek for
21 any reason other than the natural and obvious one for
22
23 326. Testimony of TOGO (T. 35,641-42).
24 327. Id. (T. 35,672.)
25

328.

his selection . If the question has any interest,
1 a clue to a probable cause of the appointment is given
2 by the testimony of Admiral OKADA (Elder Statesman
3 whose duty of assisting in the selection of a premier
4 perhaps gave him a natural interest in the composition
5 of the cabinet) that before and about the time of
6 formation of the TOJO Cabinet he was recommending Mr.
7 TOGO's appointment to his friends and acquaintances,
8 and especially to Lord Keeper of the Privy Seal KIDO .
9

Whatever the basis of his selection, the
10 intent with which he accepted the office is clear
11 enough. He has testified in considerable detail to
12 some of the facts which entered into the making of his
13 decision; these are of much importance if the position
14 of the foreign minister in modern Japan or the
15 situation of Mr. TOGO at the time is to be understood
16 correctly, and the reading of that part of Mr. TOGO's
17 testimony is invited .³³⁰ For present purposes we may
18 summarize it in this way: On the specific situation,
19 that before entering the TOJO Cabinet Mr. TOGO had
20 "in effect no correct knowledge of the progress of the

22 328. Cf. the testimony of TOJO that his selections
23 were made solely on the basis of individual merit
(T. 36,313).

24 329. T. 37,166-67.

330. Exhibit 3,646, §§39-43 (T. 35,665-70).

Japanese-American negotiations", nor any concrete
1 knowledge of the state of relations except that
2 "evidently they were gradually deteriorating" and that
3 there was a danger of war³³¹. In a more general way,
4 however, what he was extremely conscious of was the
5 extraordinary impotence of the foreign minister in
6 Japan. Both in theory and in practice the office
7 differed radically from its counterparts elsewhere.
8 Even within the cabinet, the system of collective
9 responsibility of ministers in itself precluded
10 independent management of foreign affairs by the
11 foreign minister by virtue of its corollary of collective
12 management; latterly, the tendency had moreover grown
13 for the premier to assume steadily increasing power
14 over all affairs of state, including foreign affairs.
15 On the other hand, the government itself of recent
16 years had had to yield increasingly to the power,
17 constitutional and usurped, of the military High
18 Command³³². This point is of such specific interest
19 to the case of Mr. TOGO that I must digress a moment to
20 say a word about it.

22 66. That the Japanese system of independence
23 of the military High Command was unique is admitted

24
25 331. T. 35,666-67.
332. T. 35,667-68.

1 on all hands. The prosecution have pointed this
2 out, saying that

3 "We should be unwarranted in assuming that
4 the Japanese governmental structure was like that
5 of other nations, particularly the western nations,
6 and it would be unsafe for us to proceed upon that
7 assumption .
333

8 "The Supreme Command of the army and navy
9 played a large role in the formulation of Japanese
10 aggressive policy. This was due to the fact that the
11 chiefs of staff of the army and navy, contrary to the
12 practice in all other countries, were not subordinates
13 of the ministers of war and navy, but were in theory
14 independent of and co-equal to those ministers. In
15 fact, they might well be said to have been the superior
16 of these ministers...The evidence fully considered
17 heretofore shows clearly that at all times the Supreme
18 Command exercised the right to participate in formulating
19 policy on matters relating to declaration of war,
20 foreign relations, treaty negotiations and ratification
21 and many external matters because of their relation,
22 actual or supposed, to the subject of national defense...
23 Japan had no political organ which could restrain the

24
25 333. Summation, SK-11 (T. 40,550).

High Command from plunging the nation into hostilities. ³³⁴

"Although within its own sphere the Supreme Command could not be interfered with by the cabinet, the Supreme Command, in addition to its participation in the formulation of national policy, effectively controlled the cabinet. While with respect to matters within its own realm the Supreme Command was independent of the cabinet, the converse of the statement is not true. The cabinet was not within its own realm independent of the High Command." ³³⁵

But having, with perfect accuracy, acknowledged so much, the prosecution remember the effect that this concession will have on their attempt to convict those members of cabinets who, standing out against this irresistible power of the High Command, finally went under in their effort to prevent it from "plunging the nation into hostilities". They therefore deny all that they have already said, by adding that

"The strength and responsibility of the Supreme Command in no way alters the basic responsibility of the Cabinet for the formulation of national policy." ³³⁶

Oh! does it not? When only a bare half-dozen pages further on they are to approve "the ordinary

334. *Id.*, SK-15 (T. 40, 557-58).

335. *Id.*, SK-16 (T. 40, 559).

336. *Id.*, SK-15 (T. 40, 559).

1 presumption...that responsibility for an act follows
 2 the power and duty to do that act"³³⁷? The presumption
 3 must have its converse, that non-responsibility follows
 4 upon impotence and absence of duty.

5 In explanation of why an impotent government
 6 must share with the High Command which had usurped
 7 its power the responsibility for exercise of that power
 8 the prosecution can suggest only that

9 "It should be noted that while there was
 10 no organ of control, the government did have the power
 11 to control expenditures. However, the government never
 12 made any effort to withhold the funds demanded by the
 13 Supreme Command and no one in the government ever
 14 proposed to do so. Since the Supreme Command could
 15 not have gone forward unless the government supplied the
 16 funds, this fact should be borne in mind..."³³⁸

17 The extent of the Government's control over
 18 the expenditures of the High Command has not been made
 19 the subject of evidence in the case, and the prosecution's
 20 statement--which is in fact subject to important qualifica-
 21 tions--cannot do duty for proof.³³⁹ But if it were exact,
 22 it does not support the conclusion. For the prosecution
 23 have also pointed out that "The Supreme Command could go
 24 further and

337. *Id.*, SK-20 (T. 40,565).

338. *Id.*, SK-15 (T. 40,558-59). 339. The second sentence of the quotation is naturally supported by no evidence.

1 determine whether a new cabinet would be allowed to
2 be created and whether the existing cabinet would be
3 permitted to continue...the evidence shows several
4 instances where cabinets fell and one instance where
5 a cabinet could not be formed because of failure of
6 the chiefs of the army to provide a war minister.
7 ...The Supreme Command had the power to bring about
8 the fall of an unwanted cabinet and to prevent the
9 formation of a new one undesirable to them. The
10 Supreme Command, both through its participation in
11 the formulation of national policy and through its
12 control over the cabinet, had ultimate responsibility
13 for the policy decided ³⁴⁰ ."

14

15

16

17

18

19

20

21

22

23

24

25

340. Id., SK-17 (T. 40,561-62).

Then what becomes of the Government's "power
1 to control expenditures?" If the expenditures demanded
2 are refused, the High Command will bring about, as it
3 can do it at its pleasure, destruction of the cabinet
4 which would obstruct its will; and it can prevent
5 formation of a successor cabinet except upon terms of
6 consent to its demands. Truly, "the High Command
7 effectively controlled the Cabinet;" the government
8 could no more restrain the High Command in its budget-
9 ary demands than it could interfere with its exercise
10 of "the right to participate in formulating policy on"
11 matters claimed to have relation with the national
12 defense, no more than it could "restrain it from
13 plunging the nation into hostilities." The prosecu-
14 tion's original statement of the position was correct:
15 "the Supreme Command . . . had ultimate responsibility
16 for the policy decided" under its ascendancy; "the
17 ordinary presumption prevails that responsibility for
18 an act follows the power and duty to do that act."

So far as concerns the relations of the High
Command to the Government, it should moreover be noted
that the Ministers of War and Navy, though in constitu-
tional theory representatives of the Government, in
practice spoke with the voice of the High Command. This
point, which the prosecution have conceded,³⁴¹ needs no
341. Summation, K-16, Tr. 40, 559-61.

1 further demonstration than the fact that it was the War
2 Minister, General TOJO, who brought about the fall of
3 the Third KONOYE Cabinet by giving expression to and
4 maintaining the insistence of the Army High Command that
5 no concession could be made in the matter of withdrawal
6 of troops from China or of continuance of the Japanese-
7 American negotiations.³⁴²

8 67. This excursus has been made to provide
9 background for an understanding of the condition upon
10 which Mr. TOGO entered into the TOJO Cabinet. Being,
11 as he has testified, well aware of this state of affairs,
12 he was unwilling to accept the responsibilities of the
13 foreign affairs portfolio until he could gain some
14 understanding of how international affairs -- and
15 specifically Japanese-American relations -- stood, nor
16 unless he could feel assurance that as foreign minister
17 he would "have scope for action."³⁴³ He therefore told
18 General TOJO, when on invitation he visited him at
19 11:30 on the night of 17 October, that "before coming
20 to any decision whether to accept the portfolio I
21 must first be informed of the situation which had
22 brought about the fall of the preceding cabinet."³⁴⁴

23
24
25 342. Summation, G-108 - G-112, Tr. 39,647-52.
343. Testimony of TOGO, Tr. 35,670-71.

344. Tr. 35,671.

1 From him he learned "the general direction in
2 which the negotiations were proceeding."³⁴⁵ It is
3 apparent from the evidence that the Premier-Designate
4 at first insisted that the Army would stand firm on the
5 ground which it had theretofore occupied toward the
6 Japanese-American negotiations; the report of the con-
7 versation between the two which Mr. TOGO gave at the
8 time to YAMAMOTO, Kumaichi was to the effect that he
9 had first rejected the offer of the foreign ministership
10 "on the ground that, so long as the Army clung to its
11 old attitude, especially on the question of stationing
12 troops in China, the successful conclusion of the
13 Japanese-American negotiations was hopeless." After
14 further discussion, however, he had accepted upon the
15 promise that the cabinet would strive for successful
16 conclusion of the negotiations by undertaking reconsid-
17 eration of the questions involved, including that of
18 the stationing of troops.³⁴⁶ Mr. TOGO's testimony is
19 to the same effect;

20
21 "After hearing his explanations I said that
22 in the event that the Army's stand was to be uncom-
23 promising, if even only on the question of the station-
24 ing of troops in China, the negotiations would to a
25

345. Testimony of TOGO, Tr. 35,984.

346. Testimony of YAMAMOTO, Tr. 25,919.

certainty end in a breakdown. Since in that case the
1 continuance of negotiations would be meaningless, I
2 said that if the new cabinet was to be formed on the
3 basis of such a prospect I should have to reject the
4 proffered portfolio of Foreign Affairs. I made it
5 quite plain that I would agree to enter the cabinet
6 only if the Army consented to make considerable allow-
7 ances in reviewing the question of troop-stationing,
8 and as well to re-examine the other questions in the
9 Japanese-American negotiations -- in short, only if the
10 Army genuinely intended to facilitate the consummation
11 of these negotiations on a rational basis. In response
12 to my statement of my position, General TOJO assured me
13 that reconsideration of the various questions involved
14 in the negotiations including that of the stationing of
15 troops in China, might be undertaken. On this assurance,
16 I agreed to accept the Foreign Ministership . . ."³⁴⁷

On the following day, 18 October, the TOJO

Cabinet was sworn in and Mr. TOGO became Foreign Minister.
19 (He assumed concurrently the portfolio of Overseas Affairs;
20 but as nothing hinges on his occupancy of this post,
21 which he relinquished on 2 December 1941, it will not
22 be further referred to.)³⁴⁸

68. The prosecution have made some effort at

347. Tr. 35,671-72

348. Testimony of TOGO, Tr. 35,674

1 obfuscation of this simple, but highly significant,
2 transaction. This, together with their conventional
3 presumption of guilt, perhaps represents their attempt
4 (none other is discoverable in their arguments) to
5 demonstrate wherein they have sustained their burden
6 of proving that the defendant TOGO, whom they concede
7 to have been of unblemished character (and whom the
8 evidence proves to have been an active worker for peace)
9 until this day of 17 October 1941, entered into a con-
10 spiracy with aggression as its aim. In response to
11 Mr. TOGO's refusal to accept the foreign ministership
12 unless he was to have scope for action, "TOJO assured
13 him", they say, "that all pending questions would be
14 re-examined but gave no guarantee as to any concess-
15 ions to be made."³⁴⁹ This statement is meaningless.
16 It had been the strong stand of War Minister TOJO on
17 the question, primarily, of troop-stationing in China
18 which had brought about the downfall of the Third KONOYE
19 Cabinet. Learning of this, and gathering from the
20 Premier-Designate's words that he would make it his
21 policy to adhere to his former strong stand, Mr. TOGO
22 at first rejected his offer of the portfolio. Then
23 General TOJO expressed his willingness to ré-examine
24
25 349. Summation, WW-12, Tr. 41.887.

47,738

had occurred only on the preceding day) could hardly have been very detailed or accurate -- certainly not such as to make him "well acquainted" with it. The prosecution have introduced two misstatements of the evidence also into their allegation that "both he and defense witness YAMAMOTO stated that he requested from Prime Minister TOJO specific assurances that on the several points of the 6 September decision a re-examination of Japan's attitude would be undertaken, which he could not have done had he not known about them." First, there is no testimony that Mr. TOGO "requested" the assurance; second, there is no testimony that the assurance given contained mention of any of the points of the 6 September decision. Mr. TOGO's testimony is that he simply stated why he could not accept the foreign ministership; "in response to my statement of my position, General TOJO assured me . . ."³⁵³ YAMAMOTO says that "when offered the Foreign portfolio . . . he had rejected it . . . After exchange of opinions, however, he said, he had at last accepted the offer upon General TOJO's promise that . . ."³⁵⁴ No suggestion here of a "request for assurance." On the other point, Mr. TOGO testified that the assurance given by the

353. Tr. 35,671.

354. Tr. 25,919.

1 the national policy without being bound by the 6 Sept-
2 ember decision -- "I made it plain to (him) as to a
3 policy of a 'clean slate' and answered that we would
4 do our utmost to put through the Japanese-American
5 negotiations."³⁵⁰ And then only did Mr. TOGO agree
6 to take the office. What greater guarantee could one
7 want, than that that very 6 September decision which
8 the prosecution contend to have been the chart for the
9 Pacific war would not be binding, that the question of
10 the stationing of troops would be reconsidered -- which
11 must mean "reconsidered with a view to further concess-
12 ions?" It is as specific a guarantee as could be
13 expected until the details of the entire negotiations
14 should have been studied; it is the assurance that the
15 Foreign Minister would have the right to work for peace.

16 But the prosecution -- recognizing that this
17 laudable manifestation of anti-aggressive intent must
18 if possible be disparaged -- profess to find discrepan-
19 cies in details of Mr. TOGO's testimony.

20 "The accused contends that when he accepted
21 this offer, he was insufficiently informed about the
22 then existing situation as he had been in retirement
23 during the whole preceding year. He testified that
24 he had only vague knowledge of the contents of the

350. Testimony of TOJO, Tr. 36,315.

1 decision of the Imperial Conference of 6 September
2 and knew nothing of the Imperial Conference decision
3 of 2 July. His statements are contradictory, however,
4 because he also testified that he was well acquainted
5 with the circumstances surrounding the fall of the
6 KONOYE Cabinet and both he and defense witness
7 YAMAMOTO stated that he requested from Prime Minister
8 TOJO specific assurances that on the several points
9 of the 6 September decision a re-examination of Japan's
10 attitude would be undertaken, which he could not have
11 done had he not known about them.³⁵¹

12 Weeding out three misstatements of the evidence,
13 we find in what remains no trace of a discrepancy or a
14 contradiction. Mr. TOGO never testified that "he was
15 well acquainted with the circumstances surrounding the
16 fall of the KONOYE Cabinet." What he said was, in his
17 affidavit, that he "kn[ew] that it was the strong stand
18 of the Army, as expressed through Minister of War TOJO,
19 which had directly brought about the downfall of Prince
20 KONOYE's last cabinet"; and on cross-examination he gave
21 the source of his information: "I heard this from
22 journalists, from newspaper writers."³⁵² The knowledge
23 of journalists, which was the extent of Mr. TOGO's
24 information, of the true history of this event (which
25

351. Summation, ##-12, Tr. 41,887-88.

352. Tr. 35,987.

had occurred only on the preceding day) could hardly have been very detailed or accurate -- certainly not such as to make him "well acquainted" with it. The prosecution have introduced two misstatements of the evidence also into their allegation that "both he and defense witness YAMAMOTO stated that he requested from Prime Minister TOJO specific assurances that on the several points of the 6 September decision a re-examination of Japan's attitude would be undertaken, which he could not have done had he not known about them." First, there is no testimony that Mr. TOGO "requested" the assurance; second, there is no testimony that the assurance given contained mention of any of the points of the 6 September decision. Mr. TOGO's testimony is that he simply stated why he could not accept the foreign ministership; "in response to my statement of my position, General TOJO assured me . . ."³⁵³ YAMAMOTO says that "when offered the Foreign portfolio . . . he had rejected it . . . After exchange of opinions, however, he said, he had at last accepted the offer upon General TOJO's promise that . . ."³⁵⁴ No suggestion here of a "request for assurance." On the other point, Mr. TOGO testified that the assurance given by the

353. Tr. 35,671.
354. Tr. 25,919.

Premier was of "reconsideration of the various questions involved in the negotiations"³⁵⁵ -- not of the questions involved in the 6 September decision. YAMAMOTO's testimony is that General TOJO promised "that his cabinet would . . . strive for successful conclusion of the negotiations by undertaking reconsideration of the various unsettled questions . . . without being bound by the Imperial Conference decision."³⁵⁶ Here it appears that the Imperial Conference decision was mentioned; but there is no suggestion that its terms were discussed.

So much for this attempt by the prosecution to distort the facts. A word must be added, however, concerning the significance of this TOGO-TOJO conversation which has moved the prosecution to treat it so. If the picture which they have carefully depicted were a true one -- if the TOJO Cabinet was formed to initiate the aggressive war, "according to plan," against the United States and others, if Mr. TOGO had been but biding his time until arrival of the glorious day when he could again resume his active part in the conspiracy, he would of course never have commenced such a conversation with General TOJO at all. The conspirator invited into the TOJO Cabinet would have cried, "At last!

355. Tr. 35,671

356. Tr. 25,919

I accept!" That Mr. TOGO had no intention of joining
1 in anything which might resemble a "conspiracy" is
2 clear from the facts: He had "heard from Foreign
3 Office acquaintances . . . that it had been decided
4 that the success or failure of the negotiations had
5 to be settled by the middle of October";³⁵⁷ being
6 asked to join in the middle of October a cabinet
7 being formed by the man responsible, as he had heard,
8 for the fall of the preceding cabinet, he naturally
9 wondered whether perhaps the "success or failure of
10 the negotiations" had been already decided, and insisted
11 upon being satisfied, before he would have any part in
12 the new government, that it had not been decided. Even
13 the prosecution are unable to contend that this meeting
14 did not occur, and are timid about suggesting that the
15 contents of the conversation were not those testified
16 to by Messrs. TOGO, TOJO and YAMAMOTO (as well as by
17 other witnesses, including the prosecution's General
18 TANAKA and Suzuki TOMIN, to whom Mr. TOGO spoke of the
19 matter contemporaneously);³⁵⁸ but must content themselves
20 with the attempt to misinterpret it. These circumstances
21 may be left to speak for themselves.

24 357. Tr. 35,983.
25 358. Testimony of TANAKA, Ryukichi, Tr. 35,542;

TOMIYOSHI, Eiji, Tr. 35,524, 35,528;
Kurt Meissner, Tr. 35,463; and Suzuki TOMIN,
Tr. 1,235.

1 69. The TOJO Cabinet, the prosecution say,
2 "was generally considered in Japan to be a war
3 cabinet."³⁵⁹ This "generally considered," for whatever
4 it is worth, professes to be supported by the state-
5 ment of two witnesses. The testimony of one,
6 prosecution witness SUZUKI Tomin, on the subject of
7 the TOJO Cabinet's being "generally considered a
8 war cabinet," is: "I have always believed Mr. TOGO
9 to be an exponent of peace, and when he accepted his
10 post as Foreign Minister in the TOJO Cabinet, I was
11 very much surprised, and I asked him why he accepted
12 this post."³⁶⁰

13 The testimony of the other, defense witness
14 TOMIYOSHI, is somewhat contradictory, but does not
15 sustain the prosecution's allegation. Certainly he
16 never used the words "war cabinet"; he referred to
17 "the TOJO Cabinet of the military clique."³⁶¹ He did
18 state that he himself at first believed "that it was
19 organized for some military action";³⁶² but he
20 specifically denied the meaning that the prosecution
21 attribute to his words. Being asked, moreover, "And
22 was that the common understanding, as you observed,
23 that the TOJO Cabinet was committed to military action?"

25 359. Summation, WW-13, Tr. 41888.

360. Tr. 1235-36.

361. Tr. 35524, 35525.

362. Tr. 35525, 35530, 35533.

"Well, that is not my meaning at all. The
1 general understanding with respect to the term ("cabinet
2 of the military clique") I used was that it was largely
3 constituted -- the cabinet was largely constituted by
4 military men. It did not necessarily mean that it was
5 devoted or it was organized for military action, because
6 military actions take place in accordance with or depend-
7 ent upon the course of diplomacy and international
8 conditions, and it was not my interpretation that this
9 particular cabinet was established for the purpose of
10 military actions."³⁶³

12
13
14
15
16
17
18
19
20
21
22
23
24
25

W
h
a
l
e
n
&
Y
e
l
d
e
n

The term actually used by the witness--

"military clique," not "war cabinet"--is a natural one in view of the composition of the cabinet, which, as he himself pointed out, was not only the first since that of Marshal TERAUCHI (1916-18) to be headed by an active Army officer,³⁶⁴ but included among its membership an unusual number of military men: Welfare Minister Lieutenant-General KOIZUMI,³⁶⁵ Communications Minister Admiral TERAJIMA and Minister without Portfolio (later Home Minister) Lieutenant-General ANDO,³⁶⁶ as well as of course the service ministers and General SUZUKI, President of the Planning Board and Minister without Portfolio. There is nothing whatever in the testimony of this witness to sustain the prosecution's "there was little doubt in Japan that the new government was made up of the most uncompromising elements" has been testified to by him;³⁶⁷ this must be a deliberate misstatement of the record, for neither on the page referred to³⁶⁸ nor elsewhere in his testimony is "most uncompromising elements" to be found, while on that page he is found to state that "it was general

364. Tr. 35537-38.

365. Tr. 35527-28.

366. Tr. 35538.

367. Summation, WW-13 (Tr. 41888).

368. Tr. 35528.

knowledge that a cabinet of this kind was called a
1 cabinet of the military clique"--referring to his
2 immediately preceding remark that it was the presence
3 among the cabinet ministers of this unusual number of
4 military men and not their "uncompromising" character,
5 which led to its being referred to as a "cabinet of
6 the military clique."
7

Like so many of the prosecution's contentions,
8 this one has no importance in itself, but requires the
9 consumption of the time of all concerned to dispose of
10 it just because it represents that calculated attempt
11 to prejudice which was mentioned earlier. This con-
12 tention of theirs would be utterly without significance
13 if it were a correct statement of the evidence. We
14 have seen the undisputed evidence that so far as
15 Mr. TOGO was concerned the TOJO Cabinet was a war
16 prevention cabinet. The opinion of a man, or of two
17 men, or of the seventy million of the Japanese popula-
18 tion who were not in the government, who had no
19 knowledge of the secret Japanese-American negotiations,
20 of the secret Imperial Conference decisions, of the
21 secret instruction of the Emperor to Premier TOJO
22 to re-examine the 6 September decision, of the secret
23 assurance given to Foreign Minister TOGO by the Premier
24 that that would be done, or of the fact that

upon that assurance the Foreign Minister had entered
the cabinet to work for the success of the negotiations
with America, to avoid war--the opinions of
those who knew only what appeared in the newspapers,
can have no value for this Tribunal on the question
of the guilt or innocence of Mr. TOGO of conspiring
to wage aggressive war.

70. To decide for the Tribunal this issue
of whether the defendant TOGO participated in a
conspiracy to wage the Pacific war or earnestly endeavored
to avert it, the prosecution offer also
the opinion of Ambassador, Admiral NOMURA, as he
formed it in Washington upon learning of the installation
of the TOJO Cabinet.³⁶⁹ The extent of Ambassador
NOMURA's knowledge of the situation in Japan and
the value of his opinion are perhaps sufficiently
obvious;³⁷⁰ but the quite normal incident of his
tendering his resignation serves the prosecution well
as opportunity to inject prejudicial matter into the
case, and we must therefore notice it. Admiral
NOMURA's offer to resign stated that he did not
wish to stay on in Washington, "deceiving myself and
others;" this telegram, the prosecution point out,

369. Summation, WW-13 (Tr. 41888).

370. Cf. Summation for the Defense, Section "K",
"The Japanese-American Negotiations," Section 81,
(Tr. 43728-34).

1 "was sent by NOMURA notwithstanding the fact that
2 two days previously the accused had informed him
3 that Japan wished to continue the negotiations,
4 NOMURA apparently having little faith in these
5 assertions.³⁷¹ Now, Admiral NOMURA's faith in the
6 negotiations or lack of faith is immaterial; if it
7 were material, it could be measured by the fact that
8 he stayed on in Washington, despite having sent the
9 formal, self-depreciatory telegram of resignation.
10 Mr. TOGO, in the course of his five-day cross-
11 examination--most of which was devoted to this type
12 of footling question--testified that:

13 "In my reply to this telegram from Admiral
14 NOMURA, feeling as I told you before that he was
15 laboring under some misunderstanding, I said that the
16 new cabinet was also earnestly striving for the
17 successful conclusion of the negotiations and that,
18 therefore, I hoped that he would remain at his post
19 and, for the sake of our country, strive for the
20 solution of the negotiations. And Ambassador NOMURA
21 accepted my reply because he chose to remain at his
22 post, and that to me is proof of the fact that
23 NOMURA was under a misunderstanding when he sent me
24 that telegram.³⁷²

371. Summation, WW-13 (Tr. 41889).

372. Tr. 36034-35.

The prosecutor undertook to impeach Mr. TOGO
1 on this point--but his methods are novel. First, he
2 asked the defendant, "Is it a fact that you never
3 permitted NOMURA to go alone to see Cordell Hull, the
4 Secretary of State, or the President of the United
5 States, after he sent that telegram to you?"³⁷³ This
6 was categorically denied; the prosecutor produced no
7 telegram of instructions to such an effect from Foreign
8 Minister TOGO to Ambassador NOMURA; he produced no
9 witness, whether Admiral NOMURA himself or any of the
10 many members of the Embassy or the Foreign Ministry
11 staff still in government service and readily avail-
12 able, to testify to any such fact. Admiral NOMURA,
13 whose opinions are now so confidently and reverently
14 presented to the Tribunal by the prosecution, was con-
15 spicuous by his nonappearance as a witness for the
16 prosecution at any stage of the trial, though he is
17 well known to be alive and in Tokyo. Second, coming
18 into court on the following day the prosecutor
19 announced:
20

"TOGO, before approaching other matters, I
22 wish to inform you that a search of the documents in
23 our possession has not disclosed any such telegram as
24 you claim to have sent to Ambassador NOMURA after his
25 373. Tr. 36030.

1 dispatch of his message to you * * * about deceiving
2 people * * * and we suggest to you that there was no
3 such message.³⁷⁴

4 No witness was produced to swear that any
5 search had been made of the files in possession of
6 the prosecution, with the result of finding "no such
7 message"; nor, needless to say, was any other proof
8 of any nature attempted of the truth of this suggestion.

9 So much for the "war cabinet" question; this
10 much time we have wasted out of the necessity of
11 destroying these straw men of the prosecution's
12 creation before continuing discussion of the issues
13 of the case.

14 71. The TOJO Cabinet was, then, organized
15 and commenced to function on 18 October 1941. "This
16 cabinet under TOJO's leadership proceeded to carry
17 out the policy of 6 September,"³⁷⁵ is the prosecution's
18 position. Before considering whether this is correct,
19 we must discuss one or two aspects of this question
20 of special concern to the defendant TOGO; and, first,
21 the legal position.

22 It is obvious in fact--and the contrary is
23 not contended even by the prosecution--that MR. TOGO

24
25 374. Tr. 36051.
375. Summation, G-115 (Tr. 39654) and WW-15 (Tr. 41891).

had no connection with the 6 September Imperial Conference decision. He had not attended that Imperial Conference, was not then in the government, and was in all but name retired (it might be noted here that with the Imperial Conference decision of 2 July also, as well as other policy decisions of the Government or the Government and the High Command since 1937, he had had nothing to do, having been either out of Japan or not in public office). The prosecution agree--in admitting that there is no charge that Mr. TOGO "joined in any conspiracy" prior to 17 October 1941--that he bears no responsibility for the 6 September decision. Yet, the prosecution have laid down the law of the case to be that: "Each and every defendant is charged with the crimes now being tried solely because of the responsibility he bears for his contribution to the formulation, in whole or in part, of Japan's aggressive policy.

"Stating the proposition conversely, no man has been charged with either crimes against peace or conventional war crimes and crimes against humanity unless he is in some way responsible for the aggressive policy followed by Japan, which gave rise to those crimes. No man has been charged in this proceeding because of any act committed or any statement made

1 by him in the course of his official duties pursuant
2 to an already established policy if those matters were
3 his only connection with that aggressive policy."³⁷⁶

4 Assuming that the policy of the TOJO Cabinet
5 was the carrying out of the 6 September decision,
6 what liability can be imposed, upon the basis of this
7 test, upon Foreign Minister TOGO? The acts committed
8 and the statements made by him were "in the course of
9 his official duties"; they were "pursuant to (the)
10 already established policy" of 6 September--it is so
11 written in the summation against Mr. TOGO individually;³⁷⁷
12 these "matters were his only connection with that
13 aggressive policy" which the TOJO Cabinet "proceeded
14 to carry out." If the policy of the 6 September
15 Imperial Conference was an aggressive one, and was
16 carried out, Mr. TOGO "bears no responsibility for
17 contribution to the formulation, in whole or in part,
18 of Japan's aggressive policy," he is not "in some way
19 responsible for the aggressive policy followed by
20 Japan." No matter how far back in history the
21 foundation of the "aggressive policy" of Japan may
22 have been laid, Mr. TOGO (not being charged with having
23 joined any conspiracy before the TOJO Cabinet days)

25 376. Summation, K-2--K-3 (Tr. 40539).
377. Id., WW-16 (Tr. 41892-95).

bears no responsibility for it.

1 Is this the final confession of failure to
2 make a case against this defendant? All else long
3 since abandoned, the case now hanging on his having
4 conspired to make a war of aggression in 1941, have
5 not the prosecution been forced to confess that by
6 the test of their own devising he cannot be adjudged
7 guilty? The prosecution cannot have their cake and
8 eat it. Either the TOJO Cabinet carried out the
9 policy of 6 September, in which event Mr. TOGO, not
10 having participated in making that policy, shares no
11 guilt of it; or it did not carry it out, but adopted
12 new policy in the making of which Mr. TOGO bore the
13 burden of opposing aggression and war. Let us see
14 what actually happened.
15

16 72. The TOJO Cabinet formed, a series of
17 Liaison Conferences began. At the opening of the
18 first of these the Premier said that it would be the
19 function of the new cabinet to reconsider the whole
20 problem of the Japanese-American negotiations, without
21 being bound by the 6 September Imperial Conference
22 decision.³⁷⁸ It immediately developed, however, that
23 the "clean slate" policy did not mean to the High
24 Command that the 6 September decision would necessarily
25

378. Testimony of YAMAMOTO (Tr. 25921) and MUTO
(Tr. 33171).

1 be reconsidered, or, indeed, that the negotiations
2 with the United States would even be continued. For
3 at that same first Liaison Conference meeting both
4 Chief and Vice-Chief of the Army General Staff spoke
5 very strongly against continuing negotiation at all.
6 No time must be lost, said Chief of Staff SUGIYAMA,
7 in arriving at a decision; and since the 6 September
8 decision left almost no room for the making of further
9 concessions on the troop-stationing question, they
10 must absolutely not be made, but in the circumstances
11 hostilities should be commenced at once.³⁷⁹ Vice-
12 Chief TSUKADA was even more intransigent; he said that
13 he could see no possible prospect of successful out-
14 come of the negotiations, and they should be broken
15 off at once and military action taken.³⁸⁰ Those who
16 had longer been members of the Liaison Conference
17 naturally exercised greater influence in its delibera-
18 tions than did newcomers such as Foreign Minister
19 TOGO--as he said, "there is a sort of momentum which
20 must be reckoned with in such a case"; those older
21 members were unable entirely to shake off the influence
22 of the earlier discussions and decisions in which they
23 379. Testimony of TOGO (Tr. 35683-84) and YAMAMOTO
24 (Tr. 25921-22).
25 380. Testimony of TOGO (Tr. 35682-83).
381. Id., (Tr. 35683).

had participated. As a result, the prevailing approach to the "re-examination of the 6 September decision" was to take it as a basis and see what revisions could be made in it, rather than to wipe it from memory and attempt a fresh approach; this being the frame of mind, there was a strong feeling that the 6 September decision could not easily be revised.³⁸² Chief of Staff SUGIYAMA had not hesitated to remind the Conference that that decision, the terms of which it was understood were to be disregarded, had contemplated that diplomacy during September should be accorded primary emphasis, but should from the beginning of October be subordinated to military preparations.³⁸³ The Foreign Minister was thus compelled from the outset to fight for the very right to carry on diplomatic measures, against the resistance of the armed forces. There is no evidence that in this fight any other member of the Liaison Conference came to his support. In the end it was only his earnest insistence that negotiation must be continued while there existed any prospect of success through it that led the Conference to the decision to go on with the Japanese-American negotiations.

25 382. Id. (Tr. 35683).
383. Id. (Tr. 35682).

Even with Army and Navy once persuaded that
re-examination of the 6 September decision was
obligatory, it was only very grudgingly that they
would agree to the making of any such concessions as
would give meaning to "continuing the negotiations"--
it being obviously futile to continue them on the
basis of the Japanese position as contained in the
6 September decision.³⁸⁴ There is little doubt from
the evidence that it was as the result wholly of
Foreign Minister TOGO's unceasing insistence that any
further moderation of the Japanese terms was finally
agreed to. No one pretends otherwise; even the prosecu-
tion admit this, while attempting to belittle its
significance. The evidence shows that he received
in the Liaison Conference little or no support--there
is actually no evidence of any positive action by
other members toward relaxation of the conditions of
the negotiations--and strongly suggests that it was
he alone who carried on the fight against Army and
Navy and their supporters. Some pretense has, however,
been made by certain defendants that it was the Army
alone, or the High Command alone--and in any event
not they--who opposed the making of concessions in the
negotiations. While understandably Mr. TOGO did not
384. Id. (Tr. 35685).

wish to testify against his fellow-defendants in this
1 matter, there is evidence showing that it was not
2 Army alone, nor High Command alone, whom he had to
3 deal with.³⁸⁵ No defendant denied the truth of this
4 evidence. The approach of the defendants who testified
5 concerning their participation in the Liaison Confer-
6 ence is to pass the matter in silence by saying only
7 that deliberations were had and resulted in the
8 adoption of a plan (to present Proposals "A" and "B").
9 The testimony of Mr. TOGO and Mr. YAMAMOTO, however,
10 is clear that opposition was encountered from Army
11 and Navy, whom the majority supported.³⁸⁶ In partic-
12 ular, the Navy's attitude--which Mr. TOGO has testified
13 that he was astonished to find "scarcely less strong"
14 than that of the Army--is put beyond doubt by one
15 incident which occurred. Toward the end of October,
16 Mr. TOGO has testified, he sent an emissary to Admiral
17 OKADA, ex-Premier and veteran of the Navy presumably
18 possessed of much influence in naval circles, to
19 request the use of that influence to moderate the
20 strong stand of the Navy toward the negotiations.³⁸⁷

- 23 385. Testimony of TOGO (Tr. 36076-77, 36083-86,
24 36090-92). One defendant's profession to have
25 taken positive action is in form of a vague
generality (testimony of SHIMADA, Tr. 35656-57).
386. Testimony of TOGO (Tr. 35685-91 and loc. cit.
~~supra n385~~) and YAMAMOTO (Tr. 25940, 25949-50).
387. Tr. 35689.

Admiral OKADA testified to having been so approached
1 by Foreign Minister TOGO.³⁸⁸ Neither was cross-examined
2 on the point by any defendant. That action of
3 Mr. TOGO in 1941 could not have been taken in antici-
4 pation of a day in 1947 when he would decide to try
5 to shift his responsibility to the Navy.
6

That it was the Foreign Minister alone who--
7 as would have been expected from his history--was
8 throughout the discussions the consistent foe of
9 extremism must be taken as established. Yet, as
10 General SUZUKI has testified, "the Foreign Minister
11 seemed to be unable to totally disregard the vigorous
12 demands made by the High Command."³⁸⁹
13

14 73. It was indeed impossible, in the
15 Liaison Conference above all, totally to disregard
16 the demands of the High Command. The extent of the
17 power of the High Command we have already seen
18 correctly stated, as quoted above,³⁹⁰ in the prosecu-
19 tion's summation; the Liaison Conference was where
20 that power was exercised. The very fact of existence
21 of the Liaison Conference is eloquent testimony to the
22 extent of military interference with functions of the
23 Government. It was a body without constitutional
24

25 388. Tr. 37165-66.

389. Tr. 35220.

390. Supra, Section 66.

, brought into existence expressly to co-
 ordinate the functions and to reconcile the viewpoints
 of the High Command and the Government; but it was
 very heavily weighted on the military side. Of its
 membership four--Premier, Foreign and Finance
 Ministers, President of the Planning Board--were
 representatives of the civilian Government; four--
 the Chiefs of Army and Navy--of the military forces.
 But in TOJO Cabinet days the Premier was an active
 military man (he who had formerly been the ardent
 advocate of the High Command's position); the
 President of the Planning Board was a military man;
 and the Vice-Chiefs, as well as the Chiefs, of Staff
 and the Vice-Chiefs, as well as the Chiefs, of Staff
 were in constant attendance. Of three secretaries,
 two were military representatives--the Directors of
 Military and Naval Affairs Bureaus--one, the Chief
 Cabinet Secretary, from the Government. The power
 of the military services being known, it needs little
 imagination to understand the strength of the military
 influence in this Liaison Conference, in which there
 sat down as participants two civilians, seven men in
 uniform. The Liaison Conference decisions being

391. Testimony of TOGO (Tr. 35677-79).

20 crime
 21 of a declar.
 22 war in violation ..
 23 ments or assurances; not ..
 24 ning or preparing domination of the Asiatic-Pacific--
 25 392. Summation, SG-51 (T. 39,579-80)

sanction, brought into existence expressly to co-
1 ordinate the functions and to reconcile the viewpoints
2 of the High Command and the Government; but it was
3 very heavily weighted on the military side. Of its
4 membership four--Premier, Foreign and Finance
5 Ministers, President of the Planning Board--were
6 representatives of the civilian Government; four--
7 the Chiefs of Army and Navy General Staffs and
8 Ministers of War and Navy--of the military forces.
9 But in TOJO Cabinet days the Premier was an active
10 military man (he who had formerly been the ardent
11 advocate of the High Command's position); the
12 President of the Planning Board was a military man;
13 and the Vice-Chiefs, as well as the Chiefs, of Staff
14 were in constant attendance. Of three secretaries,
15 who prepared agenda, draft decisions and other data,
16 two were military representatives--the Directors of
17 Military and Naval Affairs Bureaus--one, the Chief
18 Cabinet Secretary, from the Government.³⁹¹ The power
19 of the military services being known, it needs little
20 imagination to understand the strength of the military
21 influence in this Liaison Conference, in which there
22 sat down as participants two civilians, seven men in
23 uniform. The Liaison Conference decisions being
24
25

391. Testimony of TOGO (Tr. 35677-79).

almost, if not quite, invariably approved by the
1 Cabinet and, in necessary case, by Imperial Confer-
2 ence, it can be readily understood that it was
3 through this organ that the High Command exerted its
4 tremendous power to shape national policies in the
5 field of foreign affairs.
6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 74. This fight of Foreign Minister TOGO's,
2 single-handed and unflagging, against the Army and
3 Navy is the key to his case. Its results we shall see
4 in a moment; but now consider its significance. Army
5 and Navy say, "Stop these futile negotiations; now is
6 the time for war!" The Foreign Minister replies, "No!
7 Concessions must and can be made; these negotiations
8 must succeed, to avert war." How can this constitute the
9 planning and preparing war of aggression--or of war,
10 or of aggression? How can the fight to conclude peace-
11 ful agreement and settlement be related to conspiracy
12 for aggression? Fighting for, and in the end winning,
13 agreement to make concessions, to continue negotiation,
14 to try to avoid war--this is planning and preparing for
15 peace. There can, it is submitted, be no answer to
16 this proof: Foreign Minister TOGO had no hand in plan-
17 ning war.
18

19 The answer attempted by the prosecution is
20 that the negotiations themselves were a part of the
21 "conspiracy"; they were the means by which one faction
22 of the "conspirators" hoped to gain their ends without
23 war. This argument overlooks the nature of the of-
24 fenses which this Tribunal is empowered to try. That
25 there may be no mistake about it, I repeat it in the
prosecution's own words:

" . . . they adopted a two-fold policy: on
1 the one hand, they would negotiate with Britain
2 and the United States on certain specific out-
3 standing problems in accordance with certain pro-
4 posals which, if accepted, would leave Japan
5 the master of the Asiatic-Pacific world . . . ;
6 and on the other hand, they would actively pre-
7 pare for war with those countries with the
8 same objective and results. . . . Both programs
9 had the same objective, and while some of the
10 conspirators felt that they could attain the ob-
11 jectives of the conspiracy through negotiations,
12 others viewed the negotiations as impossible from
13 the beginning and regarded them as useful camou-
14 flage for the active war preparations going on
15 392
16 . . . "

17 But conspiracy to obtain domination of the Asiatic-
18 Pacific world through negotiation is not a crime
19 under the Charter of this Tribunal. The Charter's
20 crime of conspiracy is the planning or preparation
21 of a declared or undeclared war of aggression, or a
22 war in violation of international law, treaties, agree-
23 ments or assurances; not a word there speaks of plan-
24 ning or preparing domination of the Asiatic-Pacific--
25 392. Summation, SG-51 (T. 39,579-80)

or any other--area, by negotiating and concluding
1 agreements. Nor, it need hardly be mentioned, could
2 there be such an offense: the United States required
3 no guardian to prevent her from making, if she saw fit,
4 an agreement which allowed to Japan dominion of the
5 Asiatic-Pacific world; she was subject to no duress,
6 she could certainly not complain that an agreement
7 which she entered into was aggression against her.
8 This little passage from the prosecution's summation
9 is nothing more nor less than the enactment of a still
10 newer crime than those made by our Charter: conspiracy
11 to attain one's ends without the waging of a declared
12 or undeclared war of aggression, or a war in violation
13 of international law, treaties, agreements and assur-
14 ances, or a war of any nature whatsoever.

16 The prosecution seem to have recognized early
17 this fatal flaw in their case against Mr. TOGO. They
18 decided then to pin all their hopes of conviction on
19 one last point: that he "voluntarily acquiesced in
20 war." This is worth noting more carefully. It comes
21 up on objection to tender into evidence of Mr. TOGO's
22 report to the Foreign Minister in 1933; the chief of
23 counsel says:

25 "What we would like to present to this
learned Tribunal is the evidence as to what

1 these accused did, what they said at or about
2 the time of their participation in the offense,
3 whether it be the substantive one or the con-
4 spiracy; but we do not believe, Mr. President,
5 that the state of mind of TOGO in 1933 is the
6 important matter in this case. We believe it
7 is, what was his state of mind when he, as we
8 have proved, I think, and will prove, voluntar-
9 ily acquiesced in war, and aggressive war,
10 against the Western Powers." ³⁹³

11 Assuming, as the prosecution assume it, the "partici-
12 pation in the conspiracy," how is the state of mind
13 of that time proved? By "the evidence as to what
14 these accused did, what they said." The evidence of
15 what Foreign Minister TOGO did, what he said, during
16 the days when war or peace hung in the balance, is
17 clear, unequivocal, uncontradicted and decisive: he
18 fought for peace. There remains, then, only his event-
19 ual "acquiescence" in the decision for war. Of this,
20 we shall have something to say presently; but for
21 the moment, a little more on the intervening events.

22 75. The Liaison Conference discussions were
23 concerned, once the continuance of the Japanese-American
24 negotiations had been agreed upon, with three separate
25

394

but closely-related matters. There was the terms of
1 the negotiations themselves--finding any new terms of
2 concession which could be offered to recommence the
3 negotiations, then dormant--and the treatment of var-
4 ious points which arose once the negotiations had got
5 under way again. Second was certain questions of the
6 national strength as they bore on the ability to carry
7 out national policy--the ability to wage war, always
8 excluding, of course, purely strategic or military
9 questions. Third was the course to be pursued by Japan
10 if negotiations failed. Of these questions it was nat-
11 urally the first which most concerned and occupied the
12 Foreign Minister.

14 76. The subject of the Japanese-American ne-
15 gotiations has already been discussed extensively, our
16 submissions made to the Tribunal of the extent to which
17 Japan after Mr. TOGO's becoming Foreign Minister en-
18 deavored to meet the United States in an agreement.
19 What remains to be considered is Mr. TOGO's individual
20 part in the matter.

As is well known, the Liaison Conference discussions during the latter part of October resulted

- 23
24 394. Testimony of YAMAMOTO (T. 25,921-23), SUZUKI
(T. 35,213-22), TOJO (T. 36,316-24), TOGO
(T. 35,682-99).
25 395. Summation for the defense, Section "K", "The
Japanese-American Negotiations" (cited hereinaf-
ter as "The Japanese-American Negotiations")
(T. 49,493-738).

in an agreement on Proposals "A" and "B", which after
1 approval by the Imperial Conference of 5 November were
2 in due course presented to the United States. The
3 prosecution have treated ³⁹⁶ Proposal "A", the first of
4 these, as amounting to nothing in the way of conces-
5 sion from Japan's prior position, but as being in sub-
6 stance identical with the 25 September proposal, "which
7 in turn contained all the elements of the Imperial Con-
8 ference decisions of 6 September, although clothed in
9 more diplomatic language." While if this were true it
10 would, under the prosecution's theory of liability, ab-
11 solve Mr. TOGO of any possible guilt in connection with
12 ³⁹⁷ it, it is not a correct statement. There is one aspect
13 of the evidence which, while the prosecution ignore it,
14 is of tremendous significance on this point. I have
15 mentioned before, but without discussing the evidence,
16 that it is quite undisputed, whether by prosecution or
17 defense, that Foreign Minister TOGO had to wage a long
18 fight and a bitter one against the Army and the Navy
19 and their supporters to obtain agreement to the making
20 of new concessions in the negotiations with the United
21 States. There is a considerable amount of evidence on
22 the point, of which the following may be noted. Mr.
23 396. Testimony of YAMAMOTO (T. 25,921-86).
24 397. Summation, SWW-15 (T. 41,891).
25 398. Supra, §71.

TOGO himself testified that:

1 "From the beginning . . . the majority of
2 the participants in the Liaison Conference op-
3 posed the adoption of the principle of withdrawal
4 of troops from the specified areas of China, and
5 I had to fight unceasingly for it; the Army
6 members especially strongly emphasized the
7 necessity of indefinite stationing of Japanese
8 troops in specified areas of China. In the end,
9 as a result of my strong contention that it was
10 improper and disadvantageous to station troops
11 indefinitely on the soil of another country,
12 the others relaxed their stand to the extent
13 of agreeing with me to put a time-limit on the
14 stationing. As to the duration, however, var-
15 ious strong opinions were still presented. . . . I
16 did succeed in winning agreement to limiting the
17 stationing of troops in the geographical sense,
18 by having excluded from the areas where troops
19 would be stationed the Shanghai triangular zone,
20 Amoy and others; this, too, was achieved only
21 after a struggle, for there was opinion by the
22 military and naval authorities that we should
23 retain the right to station troops at all the
24 points specified by the 1940 treaty between

Japan and the Wang Ching-wei regime.

"A related problem was that of French Indo-China. . . . In this matter, too, the opposition was strong. . . .

"Persuading the Liaison Conference to agreement on these two major points was not achieved without long and arduous work. . . ." ³⁹⁹

Mr. YAMAMOTO's testimony is similar:

"But in the Liaison Conference, the Army General Staff especially strongly opposed a limitation on the period of stationing troops on the grounds that if a limitation were imposed the fruits of the China Incident would be lost, the feeling of defeat would spread over the nation, and the morale of the Army would be lowered. The Foreign Minister insisted, on the contrary, that the negotiations would undoubtedly fail unless the period was limited; and after hot discussions the General Staff at last came to agree to make the decision.

". . . To arrive at an agreement to make such concessions in spite of the many questions left unsettled for future negotiations was a difficult matter, and there were strong objections

399. T. 35,686-88.

from the Army General Staff, by whom it was
 considered an extreme concession on the part
 of Japan. . . .⁴⁰⁰"

General MUTO's testimony shows it to have been Foreign Minister TOGO, not some faction of the Liaison Conference, who urged the concessions which would make possible a peaceful settlement:

"At that time, the General Staff Office was opposed to . . . the adoption of the "A" and "B" plan. Especially, they were very strongly opposed to the "B" plan, but with regard to the . . . drafting of the "B" plan, I had expressed my views to the Chief of the General Staff. I had succeeded in having him agree to the views entertained by Foreign Minister TOGO."⁴⁰¹

The testimony of General MUTO's witness ISHII shows that the debate over proposal "B", produced as his own plan by the Foreign Minister, was by him alone against Chief of Staff SUGIYAMA.⁴⁰² Even the President of the Planning Board, General SUZUKI, admitted that "the Government, especially the Foreign Minister, was putting up a stiff fight against the contentions of the High Command."⁴⁰³

^{400.} T. 25,940-41, 25,948-49.
^{401.} T. 33,152, Cf. Ex. 3333 (T. 30,618).
^{402.} T. 33,682.
^{403.} T. 35,221.

20
21
22
23
24
25

from the Army General Staff, by whom it was
1 considered an extreme concession on the part
2 400
of Japan. . . !

3 General MUTO's testimony shows it to have been Foreign
4 Minister TOGO, not some faction of the Liaison Con-
5 ference, who urged the concessions which would make
6 possible a peaceful settlement:
7

"At that time, the General Staff Office
8 was opposed to . . . the adoption of the "A"
9 and "B" plan. Especially, they were very
10 strongly opposed to the "B" plan, but with re-
11 gard to the . . . drafting of the "B" plan, I
12 had expressed my views to the Chief of the Gen-
13 eral Staff. I had succeeded in having him agree
14 401
15 to the views entertained by Foreign Minister TOGO."

16 The testimony of General MUTO's witness ISHII shows
17 that the debate over Proposal "B", produced as his
18 own plan by the Foreign Minister, was by him alone
19 402
against Chief of Staff SUGIYAMA. Even the President
20 of the Planning Board, General SUZUKI, admitted that
21 "the Government, especially the Foreign Minister, was
22 putting up a stiff fight against the contentions of
23 403
the High Command."
24

25 400. T. 25,940-41, 25,948-49.

401. T. 33,152, Cf. Ex. 3333 (T. 30,618).

402. T. 33,682.

403. T. 35,221.

77. It can, then, only be found that it was
1 Foreign Minister TOGO who contended for, and obtained,
2 relaxation of the conditions of the negotiations. But,
3 say the prosecution, there was in reality no relaxation
4 at all; it was just the same old stand. To Mr. TOGO's
5 case it is strictly immaterial whether this be true;
6 if he believed himself to be fighting for, and to have
7 won, moderation of the military position, his inten-
8 tion is fixed for the Tribunal by that fact.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

M
o
r
s
e

Whether Japan's proposals represented concession or no concession may, however, be tested very simply by consideration of one fact: why, if Proposal "A" represented no concession, did the military forces fight it so tenaciously? Why should Mr. TOGO have had to employ all his ability and force to persuade the Army and the Navy to accept a "more diplomatic phrasing" of the same demands which had always been maintained? The armed services had no interest in the phrasing of their demands, so they were granted; they wanted the substance, and their opposition proves that they had no slightest doubt whether Proposal "A" represented surrender by them of something substantial. For the prosecution, writing their summations to prove the universal malignancy of those whom they have selected as defendants, it is easy to say that "these changes on which the accused relies most heavily in his defense did not bring any essential difference in the Japanese demands" ; but let them offer us even a theory which shall explain why Foreign Minister TOGO made his long and single-handed fight against the High Command and its supporters only to win the right to present to the United States proposals which had already been rejected. Let them suggest any alternative hypothesis
(404. Summation, s WW-15 (Tr. 41,891)

upon which the Liaison Conference would have been so painfully reluctant to sanction the presentation to the United States of Proposal "A". It is so plain that even the prosecution must recognize it -- as they have recognized it by passing the question in silence -- that had the intention of Mr. TOGO and the Liaison Conference been only to work out ways of restating more diplomatically their immutable demands, to cozen the United States with forms of words pending the moment when the hand which held the dagger would plunge it into its neighbor's back, it would have required no days and nights of contention in the Liaison Conference to have the Foreign Minister arrange the fraud. Had the Foreign Minister and the High Command been but in a friendly way preparing together how to present the old proposals in such form as to beguile the United States into believing them new ones, General TANAKA, Ryukichi of the Kempei would not have felt it necessary to order Mr. TOGO's life specially guarded from the irate militarists who wished to "dispose of" him .

405

78. By this same evidence -- this same testimony of circumstances, which cannot be perjured -- is refuted the United States' position toward the

(405. Testimony of TANAKA, Tr. 35,543)

1 Japanese proposals. The groundlessness of the
2 prosecution's contention that Proposal "A" repre-
3 sented no concession is, of course, exposed fully
4 by the fact that the United States did not so con-
5 tend at the time. The quite different United
6 States' view of Proposal "A" was that it was insin-
7 ⁴⁰⁶
8 ~~sincerely made~~. It remains to be explained by any
9 evidence or assumption why the generals, the ad-
10 mirals and Foreign Minister TOGO, entering into a
11 scheme to make to the United States insincere pro-
12 fessions of intent, found it necessary to wrangle
13 scrimoniously for ten days over whether to make
14 the professions. Could it have been to prepare for
15 themselves a defense against the day when, having
16 suffered defeat in the war they were then bent on,
17 they would be tried as "war criminals"?

18 I have said, and I repeat, that it is not
19 only quite undisputed by prosecution or defense, but
20 is affirmatively shown by evidence and is admitted
21 by all, that this fight was made by Foreign Minister
22 TOGO. Oh! the prosecution do, in their inimitable
23 way -- having cross-examined no witness on the sub-
24 ject, having produced no evidence of their own -- say
25 that "even if the accused made the efforts as alleged

(406. The Japanese-American Negotiations, §41
Tr. 43,604-05)

1 by him", they have no importance⁴⁰⁷. No answer is
2 attempted, and it is suggested that none can be made,
3 to the argument of the facts, which is submitted
4 to demonstrate the real importance of these efforts,
5 "if he made them." The facts constitute that
6 "evidence as to what these accused did, what they
7 said at or about the time of their participation
8 in the offense" which the chief prosecutor "would
9 like to present to this learned Tribunal"⁴⁰⁸, but
10 has not touched upon in summation. We submit that
11 by these facts the Tribunal will be assisted in
12 determining that fundamental question which, unlike
13 the prosecution, they cannot assume a priori:
14 whether there was "participation in the offense."

15 79. Other undisputed facts are equally sig-
16 nificant to the case of Mr. TOGO. For example, the
17 prosecution now attempt to depict him as the en-
18 thusiastic defender, while Foreign Minister in 1941,
19 of the Tripartite Pact which from 1938 to 1941 he
20 had fought tooth and nail. The attempt is supported
21 by arguments of that curious naivete so characteristic
22 of this prosecution, arguments which, in substance,
23 amount to the contention that a minister of state

24 (407. Summation, SWW-15, Tr. 41,891)
25 408. Tr. 35,359)

must be held in a public utterance always to speak
1 his private thoughts. They themselves give away the
2 whole argument, when they point out that Foreign
3 Minister TOGO's speech to the Diet on 18 November,
4 containing certain language which they profess to
5 find expressive of his attachment to the Tripartite
6 Pact, "was given to explain the policies of the
7 Cabinet to the Japanese Diet."⁴⁰⁹ Some amount of
8 cross-examination was devoted to learning whether
9 this speech of the Foreign Minister represented the
10 feelings of Mr. TOGO, the individual -- whether he
11 "believed" what he said "to be true". The answer
12 was prompt, inevitable and, it might be supposed,
13 to all but this prosecution the merest common sense:
14 "As Foreign Minister of Japan I was in such a posi-^{410.}
15 tion that I had to make a speech of that nature!"
16 Do the prosecution really believe that a minister's
17 policy statements to the national legislature
18 represent his personal views? Should we rewrite
19 for them on this assumption a number of the famous
20 speeches of history which readily occur to any of
21 us as lending themselves to this treatment?
22
23 The plain, hard facts, with their inescapable
24 (409. Summation, SWW-25, Tr. 41,909
25 410. Tr. 36,041)

implications, answer the prosecution's contention
1 that this Diet speech of Mr. TOGO's "should counter
2 effectively the accused's allegations concerning
3 his opposition to the Tripartite Pact." His
4 "allegations concerning his opposition" to the Pact
5 from 1938 to 1941 have already been fully discussed,
6 together with the prosecution's irresponsible treat-
7 ment of them.⁴¹¹ What he did in 1941 -- precisely
8 while he was as Foreign Minister making the neces-
9 sary public statement of his Government's policy --
10 was to work in the Liaison Conference for the ef-
11 fectional nullification of the Tripartite Pact. Under-
12 standing with the United States being then believed
13 already to have been reached on that item of con-
14 tention between the two countries, it was rather
15 neglected in the Liaison Conference discussion of
16 the new proposals; notwithstanding which, Mr. TOGO
17 had got the Conference to approve his reaffirmation
18 to the United States of the intention of Japan to
19 "interpret" the Pact "independently of the other
20 signatories" -- that is, not in accordance with
21 Germany's and Italy's desires -- and his commitment
22 that, even with the United States then already at
23 (411. Summation, SWW-25, Tr. 41,909
24 412. Supra. §§53-56)

war with Germany, the Pact would not be used as a
413

1 pretext for attacking the United States . Who
2 but the Foreign Minister instructed Ambassador
3 NOMURA to suggest to the United States that while
4 Japan could not abrogate the Pact, the United States
5 might be able to "read between the lines" of her
414
6 undertaking ? And who but the Foreign Minister
7 authorized Ambassador KURUSU, when he went to America,
8 to offer to sign a statement of the plain effect that
9 Japan would not collaborate with Germany in any
415
10 aggression against or attack upon the United States ?
11

12 Mr. TOGO's actions in the Licenson Conference are those
13 which have value for this Tribunal in ascertaining
14 his true intent; not the words which he spoke pub-
15 licly when stating the official line of policy --
16 policy which he did not form, but had to take as,
17 he found it if he was to have any opportunity to
18 work for its alteration. Would an illustration
19 point up the absurdity of the prosecution's reli-
20 ance on the probative value of such evidence? Appar-
21 ently there is only one course of conduct which, by
22 their standard, Mr. TOGO could when offered the
23 foreign ministership have followed without becoming
24 (413. The Japanese-American Negotiations, §53
Tr. 43,642.
25 414. Id. §18, Tr. 43,531
415. Id. §19, Tr. 43,534-37)

an aggressor. "As you know," he must say, "I am
1 personally opposed to the Tripartite Pact --
2 always have been. As Foreign Minister I should
3 have at least temporarily to approve it, since it
4 is the existing policy of Japan. But while I rea-
5 lize that you will be unable to find a foreign min-
6 ister who would fight as I should for peace and
7 against war, nevertheless I couldn't make the nec-
8 cessary speech supporting the Tripartite Pact; so
9 you'll have to get some Pact-loving militarist for
10 your foreign minister." Application of the prose-
11 cution's criterion must lead to the result that a
12 vicious or an undesirable policy can never be
13 changed; no statesman opposed to it can risk taking
14 office to work against it, for he may be hanged for
15 paying it the necessary lip-service until he can
16 succeed in reversing it.

18 The rule can be no different as applied to
19 the prosecution's proof and the defense's: that
20 public speeches for propaganda are not probative
21 of those matters which the Tribunal must know, the
22 man's true intent.

23 80. The same facts, of Mr. TOGO's actions
24 in the Liaison Conference, dispose of any contention
25 that he supported the China affair -- "adopted the

fruits" of it, in the prosecution's quaint phrase.

1 Retention of the fruits of the China Affair was
2 exactly the insistence of those whom he fought.
3 His entire labor in the Liaison Conference was de-
4 voted to bringing about the cancellation of Japan's
5 policy as it had theretofore stood, the policy of
6 insisting on the right of indefinite retention of
7 its forces in China and of asserting other special
8 rights and privileges resulting from geographical
9 propinquity of the two countries. It was the as-
10 ssertion of the principle of the right of indefi-
11 nite -- that is, permanent -- stationing of troops on
12 the soil of China which, as the High Command had
13 pointed out, assured "the fruits of the China In-
14 cident," making it possible to speak with a degree
15 of accuracy of Japan's striving for an "overlord-
16 ship" of China. What is undenied is that it was
17 Foreign Minister TOGO who urged and fought for --
18 his hardest fight -- the abandonment of that insis-
19 tence, and acceptance of the contrary principle,
20 that of withdrawal. Is this aggression? It was
21 Foreign Minister TOGO who obtained agreement to
22 proposing to the United States abandonment of the
23 claim, long asserted by Japan, of special commer-
24 cial and other rights in China based upon propinquity
25

(416. The Japanese-American Negotiations, §25,
Tr. 43,555-56)

Is this aggression -- or even "conspiracy to obtain
1 domination of the Asiatic-Pacific world"? Having
2 got consent to recognition of the principle of with-
3 drawal from China -- the adamant refusal of War
4 Minister TOJO and the High Command to consider which
5 had directly caused the fall of Prince KONOYE's
6 government -- the Foreign Minister undertook to
7 obtain agreement on a definite time-limit; starting
8 with a proposal for one of five years, he fought
9 against suggestions of 40- and 100-year periods,
10 until he got agreement on an "approximate goal" of
11 418 25 years . Whether twenty-five years was an ex-
12 cessive term (it is clearly not "much the same" as
13 an indefinite period, as the prosecution would have
14 419 it) is, as has been mentioned elsewhere , not
15 the question; excessive or not, it represented to
16 that extent a defeat for the militarists, success of
17 that extent a defeat for the militarists, success of
18 Mr. TOGO's peaceful policy. To the extent that he won
19 that relaxation of Japan's terms, that victory of
20 principle, his conduct is the opposite of aggression.

21 81. Lastly, of our examples -- analysis of
22 the entire evidence, undisputed as it is, would be
23 (417. Ex. 2,913, Tr. 25,860, and Ex. 2,914, Tr. 25,868
24 418. Testimony of TOGO, Tr. 35,686
25 419. Summation, SWW-19, Tr. 41,899-900.
26 420. The Japanese-American Negotiations, §§39, 56
 Tr. 43,597-604, 43,649-50)

tedious -- is the withdrawal from southern Indo-China,
1 provided in Proposal "B". This offer of withdrawal,
2 this first reversal of the current of armed Japanese
3 advance, may have had no meaning in the eyes of Mr.
4 Ballantine, of the Department of State ; but it ob-
5 viously enough had meaning to Japan's militarists
6 and their adherents, in view of the evidence which we
7 have already quoted of their determined opposition to
8 it. That is the measure of its meaning to the case of
9 Mr. TOGO.

10 However it may be with other matters of the
11 national policy, in the field of diplomacy, at least --
12 in the Japanese-American negotiations -- the 6 September
13 Imperial Conference decision was assuredly not followed
14 without alteration of its substance. It was on the
15 contrary, it is submitted, far departed from, and as
16 the result of the effort of the Foreign Minister.
17

18 THE PRESIDENT: We will recess for fifteen
19 minutes.

20 (Whereupon, at 1045, a recess was
21 taken until 1100, after which the proceed-
22 ings were resumed as follows:)

23
24
25 (421. Id., §§59-62, Tr. 43,654-67)

G
r
e
e
n
b
e
r
g

MARSHAL OF THE COURT: The International

1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: Major Blakeney.

3 MR. BLAKENEY: Page 163, Section 81; I'm
4 sorry, Section 82:

5 Concurrently with the diplomatic questions,
6 as has been mentioned, the Liaison Conference con-
7 sidered other subjects bearing upon the national
8 policy to be adopted. A document in evidence lists
9 the "major items to be reexamined concerning essen-
10 tials for the prosecution of the national policy."
11 The list includes eleven subjects, to be studied by
12 the High Command, the Planning Board, and the War,
13 Navy, Foreign and Finance Ministries, some to be
14 investigated independently, most of them jointly.

15 The prosecution point out that the Foreign Minister
16 (the document says "Foreign Ministry") was charged
17 with study of five of these points.
18 What is inter-
19 esting to note, as bearing on the extent to which the
20 Foreign Ministry had any hand in influencing these
21 national policies, is that whereas the High Command,
22 the Planning Board and the Finance Ministry was each

23 422. Exhibit 1328 (Tr. 11,923). The document's
24 "Statistics Bureau" has been corrected by the
25 Language Arbitration Board to "Supreme Command"
(Tr. 44,822).

423. Summation, SWW-14 (Tr. 41,890).

allotted subjects for independent study, the Foreign
1 Ministry was in no instance. Every item to be
2 "studied" by the Foreign Ministry was for study by
3 "Foreign, War and Navy Ministries" or by "Foreign
4 Ministry and High Command." The results of these
5 ⁴²⁴ studies show only two answers to have been prepared
6 by the Foreign ministry -- nos. 1 and 3 alone are so
7 indicated -- and those two were of insufficient
8 interest for the prosecution to trouble to read them
9 into the record. The trivial role of the Foreign
10 Ministry in connection with the formation of the
11 national policy, as it is shown in this document, is
12 acknowledged by the prosecution, who point out that in
13 these investigations "main emphasis was laid on Japan's
14 military strength and Japan's position as regards
15 military supplies, especially oil" -- matters which
16 obviously civilian ministries do not meddle in.
17

The dominating role of Army and Navy in
18 management of Japan's foreign affairs so interestingly
19 revealed by this document is emphasized by much other
20 evidence in the case, one item of which might con-
21 veniently be referred to here. Mr. TOGO has testi-
22 fied -- and no one has contradicted -- that in his
23

424. Exhibit 1329 (Tr. 11,928)

425. Summation, SWW-14 (Tr. 41,390)

time as Foreign Minister, and before, it was the
1 Premier who always reported to the Throne not only
2 the Liaison Conference decisions, but also all mat-
3 ter of national policy in general, including foreign
4 affairs except for the actual proceedings of the
5 Japanese-American negotiations, which were reported
426
6 by the Foreign Minister.

7 33. The operational preparations which were
8 being made by the impatient military services, con-
9 currently with the Japanese-American negotiations
10 and the Liaison Conference discussions, were mili-
11 tary secrets and as such not known to civilian mem-
12 bers of the Liaison Conference, nor discussed in
13 427
14 that body. That war preparations were in progress
15 was no secret; but these were to become effective,
16 rather than remain merely theoretical, only if the
17 negotiations failed. The interest of the Foreign
18 Minister was (except in so far as their momentum
19 generated increased exigence of the High Command)
20 therefore not in those preparations -- the details of
21 which in no event could he know of or interfere in --
22 but with seeing that negotiations did not fail. On

23 426. Tr. 35,679. Of. §43 of his affidavit
24 (Tr. 35,669-70)

25 427. Testimony of TOGO (Tr. 35,698-9, 35,702),
YAMAMOTO (Tr. 26,097), KAYA (Tr. 30,657), and
TOJO (Tr. 36,391).

this question likewise the Foreign Minister was in

opposition, supported this time only by Finance

1 Minister KAYA. The time for decision came at the
2 Liaison Conference of 1-2 November. The Army and
3 Navy insisted that if the negotiations did fail,
4 Japan must go to war without further loss of time.

5 ⁴²⁸ The argument ran like this. Unless the negotiations
6 succeeded, Japan must surely fight sooner or later;
7 her dependence upon imports (especially of petroleum)
8 was so great that with economic blockade in progress
9 "gradual exhaustion" of resources would reduce her
10 to the point where she would have to accede to any
11 demands which might be made by America after she
12 should have reached the point of being unable to
13 fight. Since if the negotiations failed she would
14 have to fight in any event, the outcome of them
15 should be ascertained and the war, if there was to
16 be war, commenced while the situation was still
17 favorable to Japan, before it deteriorated with
18 further delay. From the major premise of the great
19 majority of the Liaison Conference, that the only
20 alternative to success in the negotiations was war,
21 the Foreign Minister dissented. He felt and argued

22
23
24 428. Testimony of TOGO (Tr. 35,690-3), YAMAMOTO
25 (Tr. 25,949-51), KAYA (Tr. 30,651-3) and TOJO
(Tr. 36,316-26)

that, aside from the fact that a war with the United
1 States and Britain would be disastrous to Japan,
2 war was not the way of progress for a nation, and
3 that even if negotiations failed Japan should be
4 patient and await developments. He attempted to urge
5 the suggestion, once made in the Liaison Conference,
6 that even with relations ruptured, Japan could con-
7 tinue at peace, assuring the supply of oil, which
8 the High Command considered the vital matter, by
9 synthetic production; the Planning Board branded it
10 as impossible. In a last effort to dissuade the
11 Liaison Conference from adopting the decision for
12 war, he attempted to warn them by proving to them
13 that they could not win it, demanding the definite
14 opinions of the military representatives. Nothing
15 dismayed by the challenge, the War Minister said
16 that the prospects were certain that victory could
17 be won; the Navy Minister said that there was "no
18 need for pessimism," and the Chief of the Naval
19 429
20 General Staff was very confident.

In these circumstances, the majority of the
21 Liaison Conference reached their conclusion that war
22 would have to be decided for upon failure of the
23 negotiations. Despite the pressure of the High
24
25 429. Ibid., testimony of TOGO (Tr. 35,693-4)

1 Command and the Navy minister for immediate decision,
2 Foreign Minister TOGO and Finance minister KAYA in-
3 sisted that they be allowed until the following day
4 to consider further. Mr. TOGO did consider the
5 matter fully, coming to the conclusion that he
6 could in no way refute the views of the armed ser-
7 vices on the prospects of a war and that he could not
8 further influence the decision of the Liaison Confer-
9 ence. Still, before agreeing to the decision, he
10 asked for and got several assurances of Premier
11 TOJO designed to contribute to a successful outcome
12 of the negotiations, including the assurance that if
13 the United States showed a receptive attitude toward
14 the new Japanese proposals, the Premier would sup-
15 port him in obtaining reconsideration and still
16 further moderation of what were then the maximum
17 concessions.
18 430

19 34. The prosecution assert that Foreign
20 Minister TOGO's objection to the decision that war
21 would be necessary if negotiations failed "was based
22 on prudence rather than on principle and on the fact
23 that he was not sure that Japan was strong enough in
24 a military way to wage a successful war." The
25 431

430. Testimony of TOGO (Tr. 35,695-7), YAMAMOTO
(Tr. 25,951) and TOJO (Tr. 36,814). Finance
Minister KAYA seems to have known of this TOGO-
TOJO understanding (Tr. 30,655).

431. Summation, SWV-16 (Tr. 41,895)

1 demonstration of this has required considerable
2 distortion of the evidence. "He, therefore, advo-
3 cated in the Liaison Conference of 1 November that
4 Japan should be patient and await a changed situa-
5 tion," they say. The implication is that he advo-
6 cated "awaiting a changed situation for starting the
7 war." A reading of the entire sentence from which
8 this quotation was taken shows it to have the oppo-
9 site meaning: "I therefore insisted that even if
10 the negotiations should end in failure, war need
11 not follow; that even in such circumstances we should
12 exercise patience and forbearance and await a changed
13 situation." Better yet, read the whole sentence in
14 its context:

15 "To me it seemed of paramount importance to
16 avoid war at almost any cost; I had seen the after-
17 effects of World War I, in Europe, and knew that
18 modern warfare would bring still greater suffering
19 and misery to the peoples of the belligerent count-
20 ries, and I felt that only by steady, sound develop-
21 ment, avoiding sudden expansion or war, could a
22 nation progress. I therefore insisted that even if
23 the negotiations should end in failure, war need not
24 follow; that even in such circumstances we should
25 exercise patience and forbearance and await a changed

1 the most proper way for Japan to take was to perse-
2 vere under all difficulties and wait for the oppor-
3 tunity to mature." ⁴³⁵

4 Does this statement, read as a whole, indicate
5 "waiting for the opportunity to mature to commence
6 hostilities"?

7 It is submitted that there is not an iota of
8 evidence, save the prosecution's presumption of
9 guilt, to support the suggestion that Mr. TOGO's
10 position was one of "prudence," of awaiting a favor-
11 able time to attack. The Tribunal's presumption of
12 innocence, strongly reinforced as it is by the evi-
13 dence of what his actions and intentions theretofore
14 had always been, would be of service in interpret-
15 ing his actions at this moment, if they were ambig-
16 uous; but it is submitted that they were natural,
17 proper, and in no wise indicative of aggressive in-
18 tent. The prosecution mention that he agreed to the
19 decision of the Liaison Conference when he had de-
20 cided that "he was in no position to prove that Japan's
21 military strength was insufficient," that she could
22 not win. ⁴³⁶ A perfectly natural position: because
23 he could not prove to the others -- the only way to

24 435. Tr. 35,543
25 436. Summation, SWW-16 (Tr. 41,895)

1 ⁴³²
2 situation."

3 The Tribunal can judge whether the "changed
4 situation" here in question was a more opportune time
5 for war; whether this speaks of prudence or of prin-
6 ciple. The defendant was not cross-examined on this
7 point.

8 The witness YAMAMOTO is represented as re-
9 porting Mr. TOGO to have said that "Japan should de-
10 lay opening war until the United States participated
11 ⁴³³
12 in the European conflict"; what he actually quoted
13 Mr. TOGO as saying was that Japan should "manage her-
14 self with patience" -- not "delay opening war"; and
15 what he also said was that Mr. TOGO was "insisting
16 ⁴³⁴
17 on the necessity of preserving peace." General
18 TANAKA is quoted as giving Mr. TOGO's opinion "that
19 Japan should wait for the opportunity to mature";
20 what TANAKA said was that

21 Mr. TOGO's opinion naturally provoked great
22 disaffection within the military circles when it was
23 revealed that he had declared, at the Liaison Confer-
24 ence held in the first part of November to consider
25 whether hostilities should be opened in case the
negotiations should not necessarily mean war, and that

25 432. Testimony of TOGO (Tr. 35,690)

433. Summation, SWW-16 (Tr. 41,895)

434. Testimony of YAMAMOTO (Tr. 25,949).

1 the most proper way for Japan to take was to perse-
2 vere under all difficulties and wait for the oppor-
3 tunity to mature." 435

4 Does this statement, read as a whole, indicate
5 "waiting for the opportunity to mature to commence
6 hostilities"?

7 It is submitted that there is not an iota of
8 evidence, save the prosecution's presumption of
9 guilt, to support the suggestion that Mr. TOGO's
10 position was one of "prudence," of awaiting a favor-
11 able time to attack. The Tribunal's presumption of
12 innocence, strongly reinforced as it is by the evi-
13 dence of what his actions and intentions theretofore
14 had always been, would be of service in interpret-
15 ing his actions at this moment, if they were ambig-
16 uous; but it is submitted that they were natural,
17 proper, and in no wise indicative of aggressive in-
18 tent. The prosecution mention that he agreed to the
19 decision of the Liaison Conference when he had de-
20 cided that "he was in no position to prove that Japan's
21 military strength was insufficient," that she could
22 not win. 436 A perfectly natural position: because
23 he could not prove to the others -- the only way to

24 435. Tr. 35,543
25 436. Summation, SWW-16 (Tr. 41,895)

1 persuade them to his way of thinking -- that they
2 could not win, he preferred to agree to continue on
3 their terms, continuing to work for peace, rather
4 than resign and yield his place to one who would be
5 more complaisant in acquiescence to the militarists.

6 85. But, the prosecution object, Mr. TOGO
7 could by resigning, or by refusing his agreement or
8 his resignation, have brought about the fall of the
9 ⁴³⁷ cabinet. In view of the unanimity of the opposi-
10 tion which Mr. TOGO had encountered in his efforts
11 to moderate Japan's position and to delay war long
12 enough for diplomacy to have a chance, it is hardly
13 worth suggesting that forcing the resignation en
14 masse of the TOJO Cabinet would have resulted in
15 the triumph of Mr. TOGO's peace policy, or in any-
16 thing more than formation of a second TOJO Cabinet
17 sans Foreign Minister TOGO. The suggestion here
18 made by the prosecution is, however, a reference to
19 one of their most extraordinary doctrines, and we
20 must deal with it here.
21

22 There has been a marked tendency of prosecu-
23 tors to discuss with defendants on the witness stand,
24 as well as in their summations, the probable effects
25 on Japan's course had those defendants resigned their

437. Id., (Tr. 41,894)

1 offices at various times which the prosecution
2 select. The doctrine upon which these causeries
3 were based has finally been formulated thus:

4 "No cabinet minister can escape his respon-
5 sibility by establishing his personal feelings of op-
6 position to a cabinet decision. The decision could
7 not have been made without his consent. He always
8 had the alternative of resigning instead of casting
9 his affirmative vote for, or expressing his acquies-
10 cence in, an aggressive measure. If he did not
11 resign despite his personal convictions because he
12 felt it more important that he or the Cabinet con-
13 tinue in office, he is legally just as responsible
14 (as) and morally more responsible than an all-out
15 proponent of the aggressive policy, since he delib-
16 erately chose to approve the policy with full cog-
17 nizance and conviction of its evil."
18 438

19 This presumably refers to adoption of a new "aggres-
20 sive policy" or "aggressive measures," not to mere
21 action "pursuant to an already established policy,"
22 the case in which the prosecution say that "no man
23 has been charged."

24 "If he was in office at the time, allowed
25 438. Summation, SS-13 (Tr. 40,554-5)

his scruples to be overruled, and continued in office, we submit that quite clearly he should be convicted, and that in a moral point of view his case is at least as bad as that of one who had no such scruples . . . He could, if he was so minded, have absolved himself from the responsibility by resigning, or still more effectively if he was a cabinet minister, by refusing either to agree or resign, in which case the whole cabinet would have had to resign and the war might thus have been prevented . . . If he was out of office at the time and made clear his objection to the particular war to the extent of disassociating himself from the conspiracy although it was within the scope of the original agreement, we would concede that he should not be convicted of the offense of initiating or waging that particular war."

I do not propose to dwell long over answering this, for many answers will already have occurred to the Tribunal. I do, however, wish to mention one or two which are peculiarly applicable to the case of Mr. TOGO.

86. First, as to the assumption of fact underlying this argument. The suggestion that by

439. Summation, SC-24 (Tr. 39,057-8)

resigning, or by refusing either his assent to a
1 measure or his resignation, a cabinet minister can
2 substantially alter the course set by a majority, is
3 unfounded. As it chances, we have in the record
4 here evidence of each type of situation. Mr. TOGO
5 did refuse, in September 1942, to give his assent
6 to the creation of the Greater East Asia Ministry;
7 he failed in the effort to secure support from his
8 fellow-ministers for his position, and was unable
9 to force a general resignation; and he resigned alone.⁴⁴⁰
10 His action had no effect of altering the policy of
11 establishing the new Ministry, but only enabled the
12 leading proponent of the policy, the Premier, to take
13 over the Foreign portfolio, ending all opposition
14 to the policy. On the other hand, in July 1941
15 Foreign Minister MATSUOKA, who had become exceedingly
16 recalcitrant over the Japanese-American negotiations,
17 refused to support or execute the diplomatic poli-
18 cies of the KONOYE Cabinet while continuing to cling
19 to his position in it. A resignation en masse was
20 the solution, with Prince KONOYE immediately forming
21 a successor cabinet with no change of diplomatic
22 significance in its personnel except in the foreign
23 440. Testimony of TOGO (Tr. 35,760-1), TANAKA
24 (Tr. 35,544-5) and YUZAWA (Tr. 35,574)

1 ⁴⁴¹ In neither of these instances did
2 ministership. In neither of these instances did
3 the resignation of the Foreign Minister alter the
4 policy, nor yet palliate the condition which had
5 brought it about; in each case its only effect was
6 to give the discarded minister a sense, perhaps, of
7 the correctness of his conduct.

8 87. Secondly, as a question of practical
9 politics, this suggestion of the prosecution's that
10 a minister, to save his skin, is to resign or force
11 a change of government over every difference of
12 opinion is an odd one. It is not a question of
13 whether it is admirable to hold strong convictions
14 and to fight for them; but it is a commonplace that
15 all social life, and not least political life, must
16 be a process of compromise. The prosecution's sug-
17 gested course, prescribing compromise, leads us to
18 nothing but anarchy: governments change daily;
19 there is no policy. Their statesman must, as a
20 matter of course, make an issue of every point aris-
21 ing in the direction of affairs of state, howsoever
22 small it may appear; for any detail of policy may be
23 the link in the chain of causation which will lead
24 him to the gallows. This most novel doctrine which
25 the prosecution suggest is one which even they did

441. Exhibit 2344 (Tr. 17,693)

not subscribe to until its utility for purposes of
1 conviction was recently noticed. A year ago, in
2 presenting to the Tribunal the prosecution's consid-
3 ered view of the questions of law in the case, a dis-
4 tinguished member of the prosecution's staff said,
5 in speaking of the behavior of Japanese governmental
6 and military officials which was considered by them
7 to be proof of criminal guilt, that "we find ambassa-
8 dors threatening to resign, and resigning, when they
9 did not see eye to eye with the government at home.
10 442
11 There was no discipline among them." No discipline
12 -- exactly! No discipline, no system, no policy, no
13 government, no society. Anarchy, chaos, nihilism,
14 brought about by resignation of a public official
15 every time he found himself unable to see eye to eye
16 with the majority!

17
18
19
20
21
22
23
24
25

442. Tr. 16,795

S
p
r
a
t
t

88. The last point which I wish to mention,

in connection with this resignation question, is one of ethics. I must say that the prosecution's doctrine as quoted above strikes me as expressive of a queer, twisted morality, an unashamed cynicism out of keeping with what should be the aims of these proceedings. Let us test it by application to an actual situation, with a hypothetically altered outcome. Let us suppose that, as did happen, Mr. TOGO, becoming Foreign Minister of the TOJO Cabinet with the firm intention to fight to the end for success of the Japanese-American negotiations and to avert war, had secured consent of the Liaison Conference to the Proposals "A" and "B" and had presented them to the United States. We suppose that, contrary to the fact, the United States had shown interest; that accordingly Japan (carrying out the understanding and intention of the Premier and the Foreign Minister) made still further concessions, and that, the negotiations ending in agreement, there had been no Pacific war. Certainly Mr. TOGO would not have been criminal then? Matters did not, of course, fall out so; he failed; but his intention and our estimate of him do not differ because of that. Nothing is changed, except that he stayed on in his office to keep it from falling

1 into possession of one who would not struggle to the
2 last for peace, to end the war once it was under way,
3 as he would and did.

4 Do we apply the prosecution's doctrine, what
5 is the result? We laud the weakling, the coward who,
6 seeing failure probable or success problematical,
7 drops duty and flees all to save his paltry life;
8 we hang the statesman of courage to face the Herculean
9 task, accepting with it the onus if he fail. Were
10 Messrs. Hull ⁴⁴³ and Ballantine, ⁴⁴⁴ together with
11 Mr. TOGO, wrong, in believing it the duty of a
12 statesman to work to the last split second for peace?
13 So the prosecution seem to say. If this trial, this
14 International Military Tribunal for the Far East, has
15 a meaning, it must be in the hope that through it
16 future wars may be prevented. Yet if this sort of
17 trial of leaders of a defeated nation is to become a
18 concomitant of each successive war, the hope of ending
19 war will have been perilously impaired. Will there be
20 statesmen? Will men of vision and courage be able to
21 risk accepting public office, knowing that the requital
22 of failure is death? Once the statesman discovers
23 443. Ex. 2840 (T. at 26362).
24 444. Testimony of Joseph A. Ballantine (T. 10963).
25

that the balance of the national policy inclines,
1 be it ever so slightly, in favor of what he may fear
2 could be regarded as aggression, must he abandon all
3 effort, by staying on in office, to influence it for
4 the better, and precipitately flee for his own safety,
5 leaving the field uncontested to the advocates of evil?
6 Such is the plain consequence of adoption of the prose-
7 cution's doctrine of responsibility.

89. At any rate, Mr. TOGO did consider
9 resignation before he gave his consent to the Liaison
10 Conference decision of 2 November. He has testified to
11 having given thought to whether his resignation could
12 affect the situation, and to having taken advice; he
13 called on his former senior in the Foreign Ministry,
14 Mr. HIROTA, and "told him that the Japanese-American
15 question was in far more serious state than I had
16 thought when I entered the cabinet, and that there
17 was great danger of war despite my resolution to succeed
18 by diplomacy, and asked his opinion of whether there
19 was a possibility of bringing about a change in the
20 situation by my resignation. Mr. HIROTA was opposed
21 to the idea; if I resigned, he pointed out, a supporter
22 of war might immediately be appointed Foreign Minister,
23 therefore I should remain in office to do all that I
24
25

445.

could to maintain peace."

1 Interestingly, the identical advice came
2 from General TANAKA, Ryukichi, with whom he seems to
3 have talked at the same time. The General says:

4 "I earnestly requested him to retain his
5 office, pointing out that it would be quite impossible
6 to find another person who would resolutely do his ut-
7 most to check the outbreak of war in opposition to the
8 army; that if such a person as Mr. MATSUOKA should be
9 recalled to replace him, it would naturally become
10 more difficult to prevent war; and that, should war
11 unfortunately break out, his remaining in office
12 would become all the more necessary in consideration
13 of the national strength of Japan, so that he might
14 be able to seize the earliest opportunity to conclude
15 446.
16 peace.

17 Perhaps most of us, undertaking to ascertain
18 another's motives, try to imagine ourselves in his
19 place. This question may well be left there; let
20 one put oneself, assumed to be a peace-lover, an
21 opponent of aggression, in the place where no action
22 of one's own can determine surely the outcome of war or
23 peace, but one's resignation will make war the more

24 445. T. 35697.
25 446. T. 35544.

1 probable, one's staying on may preserve the peace;
2 what does one do?

3 90. "The final decisions having been taken
4 and the accused having assented to them, he became,
5 during the following month, the main figure in further-
6 ing the aims of the conspiracy,"^{447.} say the prosecu-
7 tion. This refers, presumably, to the conspiracy to
8 avoid war by negotiation, the only intention which the
9 evidence has shown the defendant TOGO to have enter-
10 tained up to this point. It still does not suffice --
11 though a prosecutor a thousand times assert him to
12 have been a conspirator, it still does not make him
13 so; there is still the burden of proof to be carried;
14 and it yet remains even to be intimated by evidence
15 that he has not fought against war, aggressive or
16 otherwise, at every step of the way. But, "personally
17 directing Japan's diplomatic maneuvers, he made the
18 strongest efforts to hide the fact that if the demands
19 then presented were not accepted, Japan would imme-
20 diately take recourse to further aggression."^{448.} This
21 calls for a number of comments.

22 The prosecution exhibited throughout these
23 proceedings a considerable confusion of thought on
24 447. Summation, SWW-19 (T. 41898).
25 448. Ibid.

1 the subject of their contention that the TOJO Cabinet's
2 Proposal "A" and "B" were Japan's "final demands."
3 That this condition still obtains is apparent from the
4 treatment of the matter in their final submissions.
5 In obedience to their idee fixe they have been led into
6 untenable positions on a number of points and have even,
7 as we have seen, gone the length of tacitly confessing
8 that they have no case against the defendant TOGO; for
9 to emphasize the "finality" of these "final demands,"
10 they maintain them to have been nothing other than the
11 minimum demands included in the policy of 6 September;
12 and they disclaim the intention of contending for
13 responsibility of a defendant who merely carried out
14 policy already established without participation by
15 him, as that of 6 September was without Mr. TOGO's.
16 The prosecution thus find themselves in the position
17 of now having, as they see it, to contend on one page
18 of their summation that Mr. TOGO made efforts to con-
19 ceal the fact that the offers of Proposals "A" and "B"
20 were final, while in the half-dozen pages following
21 insisting that he impressed strongly upon Ambassador
22 NOMURA and Ambassadors Grew and Craigie, that the
23 proposals then being made were final and that if they
24 resulted in no agreement Japan might have to resort to

1 449. At any rate, this con-
2 action in self-defense. constant statement of the prosecution's conclusion that
3 the proposals were "the last" or "final" is but a
4 play on words; such reiteration of conclusions is
5 submitted to be of little assistance to the Tribunal
6 in ascertaining the legal effect of the defendants'
7 acts.

8 91. The extent to which Proposals "A" and
9 "B" might properly have been spoken of as "final"
10 has been shown by ample evidence from which the
11 Tribunal can draw such conclusions as it may consider
12 necessary to formulating its judgment. For the case
13 of Mr. TOGO, it is perhaps unnecessary to attempt to
14 draw any conclusion whether these proposals are properly
15 characterized as "final"; it is at any rate not
16 necessary for me to offer any argument designed to
17 support interpretation of the November proposals as
18 "final" or otherwise; for what the Tribunal will, we
19 believe, wish to know is his intent as it may be
20 gathered from his actions. I wish, therefore, to
21 remind the Tribunal briefly of the factual situation
22 existing, and to show that in my submission Mr. TOGO's
23 actions were wholly consistent with and indicative of
24 honesty and sincerity of purpose. The Tribunal will
25
449. Id., ssww-19-22 (T. 41898-904).

draw from the facts what conclusion they justify
1 concerning "finality."

2 The facts disclosed by the evidence which we
3 have reviewed are that if Proposals "A" and "B" were
4 the "last word," it was of no desire of Mr. TOGO's
5 that they should be such; but that on the contrary
6 the Foreign Minister had fought to the limit of
7 his ability for moderation of the Japanese position,
8 and had secured this much—which we have submitted
9 elsewhere to represent really substantial concessions.
10 It had been decided by the Liaison Conference, despite
11 his objection, that unless agreement could be reached
12 on the basis of these proposals a decision for war
13 would have to be taken -- that the concessions made in
14 them must be the last. The proceedings in the Liaison
15 Conference leave no room for doubt that as of November
16 1941 Proposals "A" and "B" represented the ultimate in
17 the sense that they comprised the general matters, and
18 the only ones, in which concession by Japan would be
19 made. What can, of course, never be lost sight of is
20 that the negotiations with the United States contem-
21 plated, in the Japanese view, some give-and-take, some
22 reciprocal attempt at agreement or compromise; not that
23 450. The Japanese-American Negotiations, §§53-66 (T.
24 43638-78).

1 there would continue to be, as for many weary months
2 there had been, only unilateral efforts to please the
3 other party. So long as the other party "never talked
4 to them in terms of concessions from our principles,"
5 there would inevitably come a time when the Japanese
6 would feel that, their last card played, they must
7 give up the effort -- but this matter has been argued
8 elsewhere. To the minds of many, that time, as
9 the evidence shows, had come.

10 It is therefore submitted that Foreign
11 Minister TOGO's explanations to Ambassadors Grew and
12 Craigie not only were strictly accurate and honest, but
13 so far from having sinister implications were the
14 conduct in the circumstances natural to one intent
15 upon bringing the negotiations to success. The con-
16 versation with Ambassador Craigie speaks the exact
17 situation as it then was: there were "factions in the
18 country which insist that there is no need for negotiat-
19 ing and point out the uselessness of doing so," the
20 negotiations were "being continued only after these
21 factions were checked," the Foreign Minister was
22 "making superhuman efforts" at that time in the attempt
23 451. Testimony of Ballantine (T. 11159).
24 452. The Japanese-American Negotiations, ss46, 57, 82, et
25 passim.
453. Infra, n459.

1 to save Japanese-American and Japanese-British
2 relations from coming to a crisis. To Ambassador
3 Grew explanation of the same tenor was given, with
4 the additional mention that if conditions continued
5 as they then were, Japan might "feel obliged resolutely
6 to resort to measures of self-defense" ; such was
7 the purport of the decision taken by the Liaison
8 Conference. The two conversations strikingly illus-
9 trate that, so far from attempting "to hide the fact
10 that if the demands then presented were not accepted,
11 Japan would immediately take recourse to further
12 aggression," Foreign Minister TOGO attempted to
13 impress upon the two ambassadors that he could not
14 control the situation any further, had done his ut-
15 most, and now had to rest his hopes on the American
16 reaction to the proposals then made. His words were
17 the most earnest effort to make them realize the gravity
18 of the situation: "Our domestic political situation
19 will permit no further delays in reaching a decision,"
20 he told Ambassador Craizie; "national sentiment will
21 not tolerate further protracted delay in arriving at
22 some conclusion," he said to Ambassador Grew, who
23
24 454. Exhibit 1174 (T. 10354).
25 455. Exhibit 2918 (T. 25925).

from long experience of Japan well knew the Government's problem of trying to manage the armed services. Foreign Minister TOGO could scarcely have stated to them more accurately the decisions of the Liaison Conference than by these words. And the words were true; the situation was as he described it; it was so despite his most valiant opposition. Where is the fault in him for stating honestly the gravity of the situation, the truth that matters were beyond his control? Where is the "hiding the facts"?

92. But if Proposals "A" and "B" represented the area within the limits of which Japan would make concession, the evidence shows equally that, given any display of American interest in these attempts, there might well have been further changes in the actual terms. It will be remembered that the Foreign Minister had obtained from the Premier, before agreeing to the Liaison Conference decision of 2 November, his undertaking that in the event of American responsiveness to the proposals he would support the Foreign Minister's effort to obtain still further concession.

456. It is in this sense that must be taken General TOJO's testimony that acceptance by the United States of

456. Testimony of TOGO (T. 35697), TOJO (T. 36814), KAYA (T. 30655) and YAMAMOTO (T. 25951).

1 "half" of Proposal "B" might have sufficed to prevent
2 war: that acceptance by America of any item would
3 have served, because the Japanese terms could have
4 been relaxed "if the United States approached us in
457.
5 a spirit of reciprocity." So far from this state-
6 ment of General TOJO's being in "controversy" of
458.
7 the evidence in the case, the record is filled
8 with evidence that the absence of American response to
9 the Japanese advances had always been stressed by the
10 High Command as indicative of the hopelessness of
11 negotiations and the desirability of early resort to
12 459.
13 war. There is no reason to doubt that support of
14 Premier and War Minister TOJO would have sufficed to
15 enable Mr. TOGO to obtain from the Liaison Conference
16 the further concessions which would have kept the
460.
17 negotiations alive. He was hence able quite
18 accurately to advise Ambassador NOMURA that Proposal
19 "A" embodied the "virtually final" concessions.

20 There is no contradiction between Mr. TOGO's
21 (and other witnesses') statement that Proposals "A"
22 and "B" represented the utmost concessions which could

23 457. T. 36697-98.

24 458. Summation, §39 (T. 38982).

25 459. Testimony of TOGO (T. 35683-84), TOJO (T. 36297) and
YAMAMOTO (T. 25923-24); exhibit 2924 (T. 25960).

460. Cf. The Japanese-American Negotiations, §81
(T. 43728).

1 be wrung from the military authorities, and the testi-
2 mony that these proposals were nevertheless not
3 461.
4 "absolutely final." They represented the utmost
5 concession which could be won at that time; it would,
6 admittedly, have been difficult to secure approval
7 of further concessions. Difficult, but not impossible;
8 it would have required the same procedure of Liaison
9 Conference and Imperial Conference approval that was
10 required for Proposals "A" and "B" themselves, but the
11 meaning of the TOGO-TOJO Conversation is that the
12 Premier's powerful support would have been given to
13 that **effort**. What it required above all was, of course,
14 a show of interest -- of sincerity in negotiating --
15 by the United States. That would have armed the
16 Foreign Minister formidably for his fight to convince
17 the militarists that diplomacy could succeed. But
18 the United States showed no interest.

19 93. Foreign Minister TOGO's instructions to
20 his ambassadors in Washington and elsewhere have been
21 very heavily relied on by the prosecution to sustain
22 their contention that it was never intended that
23 further changes in the Japanese position should be
24 made after adoption of Proposals "A" and "B." It is
25 461. Summation, SWW-16 (T. 41892).

submitted that their reasoning is not impressive if
1 the matter be considered in the light of common sense.
2 Evidence offered by the defense to prove the diplomatic
3 practice in accordance with which these instructions
4 were sent was not accepted by the Tribunal; ⁴⁶² But,
5 as I have said, common sense alone will suffice.
6 Before discussing that matter, however, it must again
7 be pointed out that many of the communications from the
8 Foreign Ministry to the Washington Embassy were put in
9 evidence by the prosecution in form of intercepted
10 telegrams, the unreliability of which has we believe
11 been fully demonstrated; ⁴⁶³ although the originals
12 of those containing the gravest errors have been put
13 in evidence by the defense, the prosecution still
14 quote to the Tribunal the more prejudicial mistakes
15 of the intercepts as evidence proving the intention of
16 the Foreign Minister whose language they have been
17 proved not to have been. ^{464.} It may not therefore
18 come amiss to enter a general caveat against acceptance
19 of the language of exhibits 1164, 1165, and 1170, the
20 original forms of which are represented by exhibits
21 2924, 2925, and 2926, respectively.

23 462. T. 38841-46.

24 463. The Japanese-American Negotiations, §§42-46
(T. 43607-21).

25 464. Summation, SSG-117 (T. 39656-57), WW-19 (T. 41898-99
XX-65 (T. 42002), etc.

94. The prosecution's position in connection with Foreign Minister TOGO's instructions to his ambassador as probative of his aggressive intent is predicated upon the use in those instructions of such language as "the present negotiations are our final effort"; "these proposals are truly our last"; "if speedy conclusion of the negotiations is not to be attained even on the basis of these proposals, breakdown of the negotiations is unavoidable, however regrettable it may be. Relations between the two countries face rupture in such a case"; "this is our proposal setting forth what are virtually our final concessions"; "any further concession on our part can hardly be expected." I must confess to being unable to find anything sinister in these expressions. What more natural for a Foreign Minister desperately afraid of the breakdown of negotiations which would mean war than this exhortation to his ambassador to make every effort? This "finality," or "virtual finality," or the pending proposals was not of Mr. TOGO's making, but was the work of the Liaison Conference; it cannot be criminal of him to report it, as a fact, to the ambassador on whose efforts he was dependent. It is, moreover, a commonplace in
465. Ex. 2924(T.25961); 466. Ex. 2925 (T.25966).

diplomatic negotiations -- as in other types of
1 bargaining -- that one does not disclose one's hand
2 at the outset either to one's adversary or to one's
3 agent, who will be the better able to urge the
4 principal's cause if he does not know the terms
5 which will be acceptable. The situation was serious,
6 and it would have been criminal of the Foreign Minister
7 to pretend that it wasn't; only by impressing its
8 seriousness upon the other party direct -- by telling
9 Ambassador Craigie, for example, that it would be
10 useless to continue negotiations if the United States
11 could not consider the latest proposals -- and
12 indirectly, by making one's agent believe it, could
13 it be hoped to save the situation. There had, more-
14 over, been criticism in Tokyo of Admiral NOMURA as
15 "too easy-going," and it was natural therefore to
16 467.
17 spur him on.

18

19

20

21

22

23

24

25

467. Testimony of YAMAMOTO (T. 26058).

D
u
d
a

1 The prosecution point out that on 14 November
2 Ambassador NOMURA sent to Foreign Minister TOGO a
3 "warning" that war would not be to Japan's interest;
4 which "clear warning by NOMURA against opening the war
5 was ignored by TOGO who, in his answer to NOMURA's tele-
6 grom, stated that he full well realized the truth of
7 his statements but that the fundamental Japanese policy
8 had been laid down and that it was out of the question
9 to wait any longer and see what course the war would
10 468 take." Admiral NOMURA, who had served in his time
11 both as Foreign Minister and as a member of the High
12 Command, doubtless understood this telegram exactly as
13 it was intended: that Japan's fundamental policy had
14 been determined, that the Foreign Minister could not
15 change it, though he quite agreed with the Ambassador's
16 views of its undesirability, and that therefore all that
17 either of them could do was to work the harder for suc-
18 cess in the negotiations. So far from ignoring "NOMURA's
19 warning," the Foreign Minister told him here plainly
20 enough that he had tried to influence the decision in
21 469 the direction suggested by the Ambassador, but could
22 do no more.

24 95. Perhaps the true significance of the "last
25 word" issue -- "if it is an issue" -- is in its bearing
468. Summation, SWW-24 (Tr. 41,907).
469. Ex. 1178, (Tr. 10,380).
470. ". . . that issue, if it is one . ." (Statement
 by prosecution, Tr. 38,843).

on whether the 5 November Imperial Conference decision
1 was a decision for war. The prosecution are now
2 adopting the position that it was such, or at times that
3 it "cannot be seen as other than a qualified decision
4 471
5 for war." It is, needless to say, this "qualification"
6 which represented Mr. TOGO's efforts and his interest;
7 the "decision for war" -- which of course it was not,
8 by any ordinary standard of interpretation of language --
9 was subject to the important qualification that he was
10 working exclusively to prevent the condition from fall-
11 ing out in such a way that war would ensue. So far as
12 he was concerned, it was in no sense a decision for war,
13 because he had given his agreement to it only because
14 in no other way could he gain authorization to carry on
15 his work for agreement with America.

16 But it flies in the face of reason and fact to
17 contend that the 5 November decision was a decision for
18 war. Far more reasonable, it is submitted, is to regard
19 it as another form of the preparations for war, in the
20 event of failure of negotiations, which were being made
21 in parallel with the negotiations; it made war more
22 probable; but it was not a decision for war. As such,
23 it was of little interest to the Foreign Minister by
24 comparison with the negotiations which should prevent

471. Summation, §WW-16 (Tr. 41,893).

1 it from becoming effective.

2 96. A few other questions arising from the
3 Japanese-American negotiations during the time of the
4 TOJO cabinet may be discussed in brief as they affect
5 Mr. TOGO. These points have been examined in detail
6 and the very voluminous evidence reviewed in our general
7 summation on the subject, to which reference is made
8 for the full analysis of the evidence and the facts.
9 What is said here is to be regarded as only supplementary
10 to that discussion, and designed solely to demonstrate
11 the bearing of Mr. TOGO's intent on the subject.
12

13 The dispatch of Ambassador KURUSU to Washington
14 to assist Ambassador NOMURA has long been contended by
15 the prosecution to have been a "trick," or "camouflage"
16 to deceive the United States. We have submitted else-
17 472 where that these epithets of the prosecution have, when
18 examined in the light of the facts, no meaning. The
19 contention rests, after all, wholly upon the testimony
20 of General TANAKA that he was so told by the defendant
21 MUTO; if General MUTO did say anything of the sort
22 473 (which he has convincingly denied), he could not have
23 attributed to the Foreign Minister any intention of
24 "camouflage," in view of his unquestioned statement that:
25

472. The Japanese-American Negotiations, §81
(Tr. 43,732-33).

473. Summation, §-20 (Tr. 41,900).

1 "I also heard it had been suggested as a step
2 sincerely taken for Japanese-American negotiations by
3 Foreign Minister TOGO at the request of Ambassador
4 NOMURA and had been decided upon after his consultation
474
5 with TOJO, Prime Minister . . ."

6 General TANAKA himself never suggested any in-
7 sincerity in Mr. TOGO, and indeed his testimony given
8 or various occasions in his behalf negatives his having
9 had any such suspicion. Here I wish only to touch upon
10 the suggestion that "in view of the fact that KURUSU
11 could not, and in fact did not, arrive in Washington
12 until a very few days before the final deadline set for
13 the negotiations, it remains an open question what other
14 purpose his journey could have had" than that of deceiving
15 the United States and gaining time for military prepara-
16 475
17 tions. The prosecution fail to take account of the fact
18 that Ambassador KURUSU's dispatch was arranged at the
19 very earliest moment that it was possible to see any
20 benefit to accrue from it -- immediately upon the adop-
21 tion of the decision to continue negotiations. Before
22 that decision, when it was still uncertain whether the
23 negotiations would not be permitted to lapse, there would
24 have been no meaning to sending another diplomat -- that

25 474. Tr. 33,124-25.

475. Tr. 33,125.

1 might have constituted "camouflage," in truth. After
2 the decision had been made nothing would, it is sub-
3 mitted, be more natural than that this long-standing
4 request of Ambassador NOMURA's, which Foreign Minister
5 TOYODA had been on the point of complying with when he
6 quit office, should be taken up and fulfilled. It is
7 the more natural in that at that most serious period
8 of Japanese-American relations, the time which would
9 decide war or peace, Japan was represented at Washing-
10 ton by one who was to say only so much, not a professional
11 diplomat, but a retired admiral. That the request of
12 Admiral NOMURA for the assistance of Mr. KURUSU had been
13 "made, without result, when there was still sufficient
14 476
15 time for negotiations" has nothing to do with Mr. TOGO,
16 who was not then Foreign Minister; he sent him so soon
17 as he had any reason for requiring further representa-
18 tion in Washington.

19 97. The so-called deadline set by Foreign
20 Minister TOGO for conclusion of an agreement in Wash-
21 477
22 ton has been discussed in another place. It is there
23 mentioned that there is no evidence to support the
24 prosecution's contention that the "deadline" had con-
25 nection with the departure of the task force which was

476. Summation, §WW-20 (Tr. 41,901).

477. The Japanese-American Negotiations, §81
(Tr. 43,733-34).

1 to attack the American fleet at Pearl Harbor, and that
2 the inference, based upon a coincidence of date, of
3 the existence of such a connection is illogical. The
4 prosecution seem, moreover, to accept Mr. TOGO's quite
5 natural and convincing explanation of the process of
6 thought by which he arrived at the date which he set,
7 and of its purely diplomatic significance. In view of
8 the undisputed evidence that it had been understood at
9 all times that if an agreement were concluded with the
10 United States the military preparations for war would
11 be cancelled,⁴⁸⁰ it is perhaps sufficiently apparent that
12 the diplomatic "deadline" and the fleet movements had
13 no connection.

14 98. Various other aspects of the evidence are
15 probative of the sincerity with which the Foreign Minis-
16 ter worked for the success of the Japanese-American
17 negotiations. Mr. TOGO's efforts to induce British
18 participation in the negotiations, in order to insure a
19 general settlement of interested parties, have been men-
20 tioned. Equally noteworthy is the fact that he had
21 refused the insistent request of Germany for information
22 on the development of the Japanese-American negotiations,
23 feeling that permitting the Germans to become aware of
24

25 478. Summation, SWW-21 (Tr. 41,902).

479. Tr. 36,099-100.

480. Testimony of TOGO (Tr. 36,099). See also Ex. 809
(Tr. 7,988)

the nature and extent of the negotiations would not
1 contribute to their success. Only after receipt of the
2 Hull Note had made war appear highly probable, and
3 after the Liaison Conference had ordered him to negotiate
4 for a no-separate-peace movement, did Foreign Minister
5 TOGO give to the German and Italian Governments even
6 481
7 an outline of the negotiations.

8 99. The prosecution have indulged in a con-
9 siderable distortion of the evidence in connection with
10 482
11 Mr. TOGO and Proposal "B." "Both the accused and the
12 defense witness YAMAMOTO stated that they had confidence
13 that Proposal 'B' would prove acceptable, and that they
14 had full hopes that an agreement could be reached on
15 483
16 the basis of this reasonable proposal" is not a correct
17 statement of the evidence. Mr. TOGO testified, at the
18 page of the transcript cited, to nothing remotely resem-
19 bling this pretended paraphrase; what he said was that:
20

21 "Proposal 'B' was therefore -- after I had
22 secured assent of the Liaison Conference, of course --
23 presented on 20 November. At first conditions appeared
24 promising; when we learned that American newspapers of

25 481. Testimony of TOGO (Tr. 35,735) and Ex. 1199
(Tr. 10,469). Cf. Ambassador Ott's statement that on
6 November Foreign Minister TOGO "regretted that he could
not inform" him of the details of Ambassador KURUSU's
mission (Ex. 3901, Tr. 38,841, not read).

482. Summation, SWW-26 (Tr. 41,910-14).

483. Id., (Tr. 41,911).

the 25th were reporting the probability that a modus vivendi would be concluded, we assumed that it was on
the basis of Proposal 'B.'"
⁴⁸⁴

He had also testified -- which is not mentioned
that:

"I felt that if the United States were willing
to understand Japan's position and manifest a spirit of
reciprocity, it might be quite possible to break the
deadlock by agreement on the general lines of Proposal
'A.' By that time, however, matters had reached such a
state that settlement of all the outstanding problems
at a stroke was likely to be difficult at best, and
sure to be impossible if we encountered continued
American insistence on their demands. It was for the
purpose of averting a crisis by agreement on the most
urgent matters calling for immediate solution that I had
prepared Proposal 'B' as well.
⁴⁸⁵

"The deliberations of the Liaison Conference,
however, continued; it would be a happy solution if the
impasse in the negotiations could be broken by the two
new proposals, but in the light of the past attitude of
the United States sufficient expectations of a favorable
reception could not be entertained to justify the abandon-
ment of further study toward the eventuality of failure

484. Tr. 35,703.

485. Tr. 35,697-98.

486

in the negotiations.

1 ". . . I discovered that the condition of the
2 negotiations was not quite what we had all thought
3 it . . . This naturally made the prospects of a settle-
4 ment even more remote, though I still had confidence
5 that my proposals 'A' and 'B' were fair and reasonable,
6 and hoped that the United States might be persuaded to
7 487
recognize that fact."

8 Not quite the same as "confidence" that the
9 proposals would prove acceptable, that he had "full hopes"
10 that an agreement could be reached?

12 Mr. YAMAMOTO's testimony was that

13 "In the Foreign Ministry and the Liaison
14 Conference, it was felt that in view of the concessions
15 made upon careful study of the American position on
16 pending questions the United States would give favorable
17 consideration to the proposal 'A'. . . We expected
18 Proposal 'B' to be favorably entertained by the United
19 States . . . On the basis of . . . reports from Washing-
20 ton, the Japanese government offices concerned were
21 488
hopeful of success in the negotiations."

22 Not even Mr. TOGO's subordinate testified to
23 having had any "full hopes"; and the position of Mr. TOGO

25 486. Tr. 35,698-99.

487. Ibid.

488. Tr. 25,986, 26,028, 26,041.

himself is plain enough, that he considered the proposals reasonable and deserving of serious consideration, but had a little hope of them in the best case, none if America should continue uncompromising. All which has no tendency to impeach his testimony -- the purpose for which the prosecution indulged in this exercise in stating the substance of evidence -- that Proposal "B" was designed by restoring conditions to something like normal, to create an atmosphere of calm to permit of further negotiation on the basic questions, with the imminent threat of war removed; the discussion of whether such is the reasonable tendency of Proposal "B" has been made in another summation. Nor do Mr. TOGO's telegrams of 12 and 25 November to diplomatic representatives overseas, warning them of the danger of breakdown of negotiations, provide more support to the prosecution's position; it is customary in times of tension for foreign offices to notify their representatives of the possibility of a crisis in order that they may warn resident nationals to be prepared for eventualities -- not because any course has been decided. It is in fact well known that in this instance various powers, including the United States, had since the

489. Tr. 35,698.
25490. The Japanese-American Negotiations, §§58-66
(Tr. 43,654-78).

preceding year been instructing their nationals to
1 evacuate Eastern Asia.

2 Somehow, the prosecution make out that "exhibit
3 3445, a draft submitted by the accused MUTO to the
4 Foreign Ministry for the action Japan would have to
5 take if the United States agreed to the Proposal 'B'
6 clearly contradicts the assertion that it was the in-
7 tention to create a calm atmosphere for further nego-
8 ⁴⁹¹tiations." This is because, not of the fact that he
9 had seen this draft prepared elsewhere (which often
10 serves the prosecution as a basis for asserting guilt),
11 but that "it is clear that the demands which Japan was
12 to make, and which he allegedly considered reasonable
13 were not essentially different from the ones laid down
14 in this draft." The prosecution then proceed to state
15 the terms of Proposal "B," including the provision for
16 the amount of oil which was to be asked for upon its
17 conclusion, as being "demands which Japan was to make,"
18 as if the Foreign Minister's own idea. The prosecution
19 overlook that the Foreign Minister had insisted that the
20 High Command demand be reduced, and that it had as a
21 result been reduced to a figure which it is reasonable
22 to suppose the best that he could justify to them --
23
24 491. Summation, SWW-26 (Tr. 41,911).
25

492

the average of a few pre-war years' imports. This
little triumph over the military contention that they
must always maintain large reserves is not without its
own interest as showing the strength of the fight that
the Foreign Minister was making. The terms of Proposal
"B" have been fully analyzed, and need not be discussed
further; but for the prosecution to attempt now to
identify them with the terms of a General Staff proposal
of its demands in the event of agreement is scarcely
calculated to promote understanding of the issues.

493

100. That "the final preparations for Japan's
military advance were now under way" by 25 November
and inferentially -- by inclusion of this specimen of
logic in the summation against Mr. TOGO -- that the
Foreign Minister had made those preparations, the
prosecution consider to be proved by the fact of tele-
grams' having been sent to the Foreign Minister by
diplomatic representatives in Indo-China and Thailand,
telling him that "the United States' reply to the
Japanese proposals was to be received that same day and
that Japan's military forces were prepared to move."

494

One might have supposed that by prosecution logic this

492. Testimony of TOGO (Tr. 35,703), YAMAMOTO
(Tr. 33,025-43) and MUTO (Tr. 33,115-55).

493. Ibid.

494. Summation, §WW-28 (Tr. 41,915).

would have proved, if anything, that the Foreign Minister did not know of those facts, which was why his representatives in Indo-China had to advise him of them. His representatives, better informed than he thought they apparently were of the Japanese-American negotiations, missed the date of the Hull Note slightly, of course; but no doubt their advice has for all that a recondite significance. It is not apparent to me, and I cannot attempt to argue it.

101. We have heretofore considered the recommendation, made to the Foreign Ministry on 26 November by Ambassadors NOMURA and KURUSU, concerning an exchange of telegrams between President Roosevelt and the Emperor of Japan, and have undertaken to demonstrate that it offered no prospect of solution of the Japanese-American situation. It has to be added here that, contrary to the prosecution's assertion, every valid reason existed for the suggestion's not being presented to the Emperor, of which non-action the prosecution seem for some reason inclined to try to make an issue.

The suggestion seems to be that, the Emperor being known to be desirous of peace, he might have interfered, had this NOMURA-KURUSU proposal come to

495. The Japanese-American Negotiations, §72
(Tr. 43,701).

496. Summation, SWW-29 (Tr. 41,918-20).

his attention, to block the plans of the defendants who
1 were determined on war. What is ignored by this argu-
2 ment is the fact, which has never been denied, that
3 the Emperor of Japan acts on advice: of the Lord Keeper
4 of the Privy Seal, whose duty it was to advise the
5 Throne at all times; of the government, who advised
6 on matters of state. In the instance of the two
7 Ambassadors' recommendation, both these sources of
8 advice, having considered it, were opposed to its
9 adoption. The evidence leaves it quite certain that
10 Foreign Minister TOGO, after receipt of the Ambassadors'
11 telegram, discussed it with General TOJO and Admiral
12 SHIMADA, both of them being of opinion that "there was
13 absolutely no hope of a solution by such means," and
14 with Marquis KIDO, Lord Keeper, who not only felt that
15 the proposal was insufficient to save the situation but
16 "even said that if its conditions were adopted as the
17 basis of a settlement, the result might be civil war."
18 To what purpose report the proposal to the Emperor?
19 If he took advice from his government, it could hardly
20 be expected that it would be in opposition to the
21 opinions already announced by Premier, War Minister,
22 Navy Minister -- all powerful members of the cabinet,
23
24 497. Testimony of TOGO (Tr. 35,706-8), TOJO
25 (Tr. 36,360) and YAMAMOTO (Tr. 26,064-65).

1 and able to voice the opinions of the High Command as
2 well -- and Foreign Minister. If he took advice from
3 his palace advisor, it would be to the same effect.

4 It will be necessary presently to notice in
5 more detail Marquis KIDO's efforts to avoid his
6 responsibility for his connection with the Japanese-
7 American negotiations. Only a few words are necessary,
8 however, at this time. Half a dozen pages of his
9 summation are devoted to a curiously devious treatment
10 of this NOMURA-KURUSU recommendation. His treatment
11 is devious in that he did not deny, but in fact admitted,
12 when in the witness box, that Mr. TOGO's testimony to
13 the matter was correct; the attempt to evade respon-
14 sibility now is the more remarkable in that the govern-
15 ment officials concerned fully accepted responsibility
16 for the decision, the ambassadors whose proposal it was
17 had themselves already abandoned it with receipt of
18 the Hull Note, and it is obvious in fact that the
19 decision of all concerned was the only possible one
20 in the circumstances. His treatment of the matter is
21 curious because, for all his maneuverings, Marquis KIDO
22 does not come to the point of saying that "had I had
23 opportunity I should have recommended this plan to
24 498. KIDO Summation, ss285-292.
25 499. Tr. 10,442-43.

the Throne," but only of complaining that the govern-
1 ment's decision on the Hull Note was reported to the
2 Emperor before he, the Lord Keeper, had had an oppor-
3 tunity to speak with the Emperor about it -- which, by
4 his own claim of "no responsibility," he should not
5 have done anyhow. There was, in fact, as yet no govern-
6 ment decision at that time.
7

8 The frivolity of the claims advanced by the
9 defendant KIDO to justify his conduct in several
10 instances where his interests conflict with those of
11 Mr. TOGO is emphasized by the ludicrous efforts which
12 he makes to distort the latter's testimony. One of
13 these may be pointed out here. Mr. TOGO testified that

14 "Before being received in audience I explained
15 to Lord Keeper KIDO about the Hull Note, and talked with
16 him (telling him that that was their desire) concerning
17 the two Ambassadors' recommendation. He was discouraged
18 by the Hull Note, and he too was of the opinion that
19 the Ambassadors' recommendation was insufficient to
20 save the situation. Marquis KIDO even said that if
21 its conditions were adopted as the basis of a settle-
22 ment, the result might be civil war."
23

24 Marquis KIDO's summation has it that "it is

25 500. KIDO Summation, §292.
501. Tr. 35,707.

clear that TOGO was referring to the Hull Note when he
1 says that KIDO told him ". . . if its conditions were
2 adopted the result might be civil war."⁵⁰² Not if
3 language has any meaning. It may be left to the Tribunal,
4 what is the antecedent of the pronoun "its" in the last
5 sentence.⁵⁰³

If there could remain any doubt whether the
7 Ambassadors' recommendation was taken up by Foreign
8 Minister TOGO with Lord Keeper KIDO, it should suffice
9 to point out that, the Ambassadors having asked that
10 Marquis KIDO be consulted, in reply to them Mr. TOGO
⁵⁰⁴
11 stated that that had been done. He could have had no
12 reason at the time to profess to have consulted with
13 Marquis KIDO when he had not in fact done so, nor
14 certainly to tell Mr. YAMAMOTO that he had done so.⁵⁰⁵
15 The contemporaneous evidence speaks louder than any
16 testimony given here.

- 18 502. KIDO Summation, §
19 503. For another example of attempt to distort language,
20 see the KIDO summation, §290 (Tr.), where
21 Mr. TOGO is made to admit that by the evening of
22 17 October he already knew of Marquis KIDO's con-
23 versation with Ministers TOJO and OIKAWA at past
24 4 o'clock that afternoon. Mr. TOGO is most
25 obviously saying, in his affidavit, that he "knew
very well" the "conditions" mentioned just before,
which had been discussed in the preceding several
paragraphs.
504. Ex. 2249 (Tr. 16,196).
505. Ex. 1193 (Tr. 10,442).
506. Testimony of YAMAMOTO (Tr. 26,065).

THE PRESIDENT: We will adjourn until half

1 past one.

2 (Whereupon, at 1200, a recess was
3 taken.)

4 - - -

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

R
e
i
c
h
e
r
s

&

W
o
l
f

AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

2
3 MARSHAL OF THE COURT: The International
4 Military Tribunal for the Far East is now resumed.

5 THE PRESIDENT: Major Blakeney.

6 MR. BLAKENEY: Page 203, Section 102:

7
8 102. We turn from these trivialities to one
9 of the fundamental questions in the case. Mr. TOGO
10 has testified that it was the "Hull Note" of 26 November
11 which decided him that Japan must go to war, in self-
12 defence, with the United States and her allies . The
13 importance to his case of his state of mind in this
14 matter is so self-evident that no explanation or apology
15 is needed for treating it with some elaboration. The
16 issue is quite sharp: if his belief, even though
17 mistaken, was the honest and reasonable one that the
18 Hull Note forced Japan to act in self-defence, he is
19 not guilty, in having cast his vote for war, of supporting
20 war of aggression; if dishonest, his intent may be
21 found to have been aggressive. Here is the significance
22 of the prosecution's charge--apparently the last
23 remaining one, to which their case against him has
24 507. T. 35,705-6.
25

been reduced--that he "voluntarily acquiesced" in
1 the decision for war; here is the meaning of their
2 insistence that it was always intended that there
3 should be war, that the negotiations were a sham,
4 the proposals adopted on 5 November "final demands"
5 rejection of which would lead automatically to war.
6

The intention held by Mr. TOGO in November
7 1941 must be determined from his acts and his words.
8 We have discussed already, at some length, his actions
9 relating to the negotiations--how he fought vigorously
10 the militarists' contention that negotiations were
11 useless, how he fought for agreement on principles
12 which he thought necessary to the reaching of any
13 agreement with America, how he fought against adoption
14 of the 2 November decision that war must be decided
15 upon after failure of the negotiations. He had fought
16 also, but unsuccessfully, against the High Command's
17 insistence on putting a time-limit within which
18 negotiations should succeed or the decision for war
19 be taken; such a time-limit had after all been set for
20 508
21 the beginning of December . He had attempted in
22 every way within his power to impress upon his Ambassadors
23 in Washington that the making of their supreme effort
24 508. Testimony of TOGO (T. 35,700), TOJO (T. 36,326)
25 and YAMAMOTO (T. 26,057).

for success was vital; he had urged the importance of
1 the matter upon the British and American ambassadors
2 in Tokyo. He had withheld knowledge of the negotiations
3 from Germany to further their success--action submitted
4 to be utterly inconsistent with an already-formed
5 intention to go to war with America and Britain as
6 Germany's ally. He had "purged" the Foreign Ministry
7 of radical elements which had interposed obstacles
8 to the success of the negotiations which he so desired
9 by instigating adoption of a "strong" policy toward
10 Britain and the United States ; he specially
11 appointed as his diplomatic advisor former Foreign
12 Minister SATO, who of the Foreign Ministry seniors
13 had been the one to urge him fervently to leave no
14 stone unturned in his endeavors for peace . There
15 are many other actions, pointing to the same conclusion,
16 disclosed by the evidence; time does not permit me
17 to mention them individually, but one more may be
18 adverted to. The unequivocal statement that it was
19 the Hull Note which caused failure of the negotiations
20 is contained in one of those telegrams to ambassadors
21 abroad which, as confidential expressions, the
22 prosecution regard as of such highly probative value
23 509. Testimony of TOGO (T. 35,681-82) and KADOWAKI
24 (T. 35,519-20).
25 510. Testimony of SATO Naotake (35,550-52).

on the question of intent: "it has only been in the
1 negotiations of the last few days that it has become
2 gradually more and more clear that the Imperial
3 Government could no longer continue negotiations with
4 the United States", the Ambassador in Berlin was
5 advised on 30 November ⁵¹¹. All these things are
6 submitted in total to compel the conviction that
7 Foreign Minister TOGO cherished no secret desire or
8 intention, prior to the Hull Note, of waging war
9 against the Western powers.

103. We have at hand other types of evidence
11 on this point. One is the proposed foreign policy
12 for Japan submitted by Mr. TOGO in 1933, when he was
13 bureau director, to the foreign minister. The intention
14 of that time, as there expressed, he has not been
15 shown ever to have departed from; in later years, so
16 far as his official duties brought him into contact
17 with affairs of the countries there treated of, he
18 had worked for fulfillment of his proposed policies.
19 His policy then toward Britain had been one of peace.
20 "Among our international relationships", he had written,
21 "that with Great Britain constitutes one of the most
22 important...In the past, the development of Japanese-
23 British relationships has seemed to have a close
24 511. Exhibit 1,199 (T. 10,469).

connection with our national fortune and will continue
1 so in future as well." ⁵¹² The existence of obstacles
2 to good relations was recognized; but also the fact
3 that

4 "Great Britain not only has by far the
5 greatest interest in China, but plays a leading role
6 in international political affairs. She is the first
7 country with whom cooperation is to be expected,
8 in view of her position in the Far East as well as
9 of our past relationships. Although some sections in
10 Japan talk about the revival of the Anglo-Japanese
11 Alliance, a study of the situation which led to its
12 abrogation will show that such a revival cannot be
13 hoped for. Nor is the restoration of Anglo-Japanese
14 cooperation with respect to the China problem a matter
15 to be easily achieved. However, in view of the fact
16 that Japan and Great Britain have many common interests
17 in China, sufficient room should be found for cooperation
18 with regard to the settlement of Far Eastern questions,
19 especially that of China proper. In order to realize
20 this, it would be reasonable and proper to endeavor
21 to make Great Britain understand thoroughly the
22 fundamental lines of our Manchurian policy, to

23 ⁵¹² Exhibit 3,609-A, p. 5 (T. 35,478).
24 ⁵¹³ Which it will be remembered was recommended to
25 be the laying of the foundations of a "really

1 respect Britain's rights and interests in China, thereby
2 eliminating causes of conflict; to cultivate an
3 atmosphere which would be conducive to Anglo-Japanese
4 cooperation; and on the other hand to urge her to
5 help us in improving our relations with the United
514 States ."

6 He had concluded that "room for collaboration
7 between us is great as compared with other countries";
8 "promotion of friendly relations and collaboration
9 between Great Britain and Japan is highly essential."⁵¹⁵

10 His policy then toward the Netherlands had
11 been one of peace. Mentioning that the Dutch "have
12 always been under the impression that Japan might be
13 entertaining some ambitions toward their island
14 possessions" , he says that "it is therefore only
15 proper and appropriate that we should by our actions
16 eradicate the misgivings of the Dutch and promote
17 our economic realtions with them"⁵¹⁶⁵¹⁷

18
19 "The Japanese Government is now negotiating
20 with the Netherlands Government, at the latter's
21 initiative, the conclusion of treaties of arbitration

22 513 (Continued):
23 independent Manchoukuo", with the principle of the
24 Open Door and equal opportunity enforced. Supra,
§13.

25 514. Exhibit 3,609-A, p. 8 (T. 35,478-79).

515. Id., p. 27 (T. 35,484).

516. Id., p. 14 (T. 35,480).

517. Id., p. 15 (T. 35,481).

end mediation. In view of the situation set forth
1 above, we should strive earnestly for the successful
2 consummation of the present negotiations. Furthermore,
3 if the Netherlands should propose the conclusion of a
4 treaty similar in nature to the Four-Power Pact con-
5 cerning the status quo in the Pacific, about which
6 SAITO, our minister to the Netherlands, has submitted
7 his opinion to the government, we should readily
8 respond to her offer, since it would be helpful in
9 eliminating Dutch suspicions and in making clear to
10 the world our desire for peace in the Pacific. ⁵¹⁸

11 "...It is highly advisable that our government
12 endeavor to promote amity with the Dutch by clearing
13 away all misgivings, and at the same time declare
14 to the world our sincere desire and intention of
15 maintaining peace in the Pacific, of keeping it always
16 quiet and true to its name."⁵¹⁹

17 His policy then toward the United States
18 had been one of peace. He had recognized its first
19 place among the responsibilities of Japanese diplomacy.
20 "The basis of our policy toward the United States", he
21 said, "should be to avoid war and have that country
22 reconsider and revise its Far Eastern policy."⁵²⁰

23 518. Ibid.

24 519. Id., p. 15 (T. 35,481).

25 520. Exhibit 3,609-A, p. 3 (T. 35,476).

First, to avoid war!

"Japanese-American relations should be
1 thoroughly studied from all angles and any measure
2 which would contribute to the prosecution of this
3 basic policy should be carried out to the end that
4 unnecessary conflicts may be avoided and any obstacles
5 in the way of better feeling may be removed, thus to
6 restore stability in the Pacific area. This must be
7 the urgent task of Japanese diplomacy and to it our
8 full efforts must be devoted ."
9

10 Of his concrete suggestions, one is most
11 interesting:

12 "In the light of present international
13 developments, a divergence of opinion is likely to
14 occur between the two countries at the naval disarmament
15 conference scheduled to be held in 1935. If matters
16 were left as they stand, agreement on disarmament
17 would naturally fail to be reached, and as a result
18 the agreement for the maintenance of the status quo
19 with respect to fortifications in the Pacific would
20 be abrogated. The consequences which would ensue--an
21 armaments race, leading to a Japanese-American war--
22 would ultimately bring about a world war. How
23 unfavorable would be the results to Japan has already
24 §21. Id., p. 4 (T. 35,476).

been pointed out. We on our part should make every
1 effort to have the United States reconsider her Far
2 Eastern policy and, at the same time, reconsider our
3 own disarmament policy ."⁵²²

4 It was only a year later that Mr. TOGO had
5 opportunity to work for adoption of this policy, against
6 the opposition however of the Navy which, finally
7 winning out, brought to an end efforts for international
8 naval disarmament. Admiral OKADA, then Premier,
9 has testified to the fact that Mr. TOGO was vigorous
10 in his opposition to the extreme views of the Navy⁵²³ ;
11 his opposition, as is shown by other evidence, was
12 prolonged, out-spoken and on the identical basis--
13 of concern for peace in the Pacific--on which he
14 had put forward his suggestions of 1933⁵²⁴ .

16 104. Mr. TOGO's policy in 1933 was one of
17 peace. Nothing in the evidence suggests that he had
18 in any particular modified his views by 1941. As
19 we have seen, he had no illusions that Japan could
20 win a war against the United States and Britain⁵²⁵ ,
21 which strongly suggests that, whatever the confident
22 militarists may have thought, he could have come to

23 522. Id., p. 27 (T. 35,491).

24 523. T. 37,165.

25 524. Testimony of INOUE (T. 35,493).

525. Testimony of TOGO (T. 35,695-6), and YAMAMOTO
(T. 25,949).

the point of willingness to agree to a war against
1 those countries only if he believed the case to be
2 one of self-defence. He had never come to believe
3 in a possibility of Japanese victory, but had remained
4 sceptical of the Army's and Navy's assurances ; his
5 Foreign Ministry's reports to the Liaison Conference
6 on the subjects assigned to it for study with a view
7 to determining the national policy of war or peace
8 evidence no such confidence in Japan's victory, but
9 rather are informed with pessimism concerning the
10 prospects . Men highly respected in Japan, then and
11 now, have testified that Mr. TOGO opposed the Pacific
12 war. Admiral OKADA, Elder Statesman during whose
13 premiership Mr. TOGO had fought the Navy for disarmament
14 to prevent the condition which by 1941 had come about,
15 gave his testimony that there was "frequent contact"
16 between them when Mr. TOGO was Foreign Minister, and
17 that he knew Mr. TOGO "to be a lover of peace" who
18 made all efforts to prevent a Japanese-American war .
19 Admiral SUZUKI, last war-time premier of Japan, has
20 testified that he selected Mr. TOGO as his foreign
21 minister because of his feeling that Mr. TOGO had
22 opposed the war from the beginning.
23

526. Testimony of TOGO (T. 35,695).

527. Exhibit 1,329 (T. 11,928).

528. T. 37,165-67.

529. T. 35,590.

"What could the United States, Britain and
1 the Netherlands gain from going to war with Japan?"
2 ask the prosecution. Let us rephrase it: "What
3 could the defendant TOGO have believed that Japan
4 could gain by going to war with the United States,
5 Britain and the Netherlands?" Obviously, nothing.
6 Certain defeat, only. He had never believed that a
7 nation gained by resort to force, by forfeiting
8 international confidence, by war. He had always
9 believed the maintenance of friendly relations with
10 those great Western Powers the urgent task of Japanese
11 diplomacy. He expected only defeat from the under-
12 taking of a war against them. He could not have voted
13 for such a war, it is submitted, unless at the instance
14 of an honest belief that self-defence required it.

16 105. Could he reasonably have believed that
17 the war to which he gave his agreement was one of
18 self-defence? That there are adequate grounds for
19 regarding the Hull Note as implying such a threat to
20 Japanese national existence as to justify exercise of
21 the right of self-preservation, we have submitted
22 elsewhere⁵³⁰. It is here submitted that those reasons
23 are, to put it no more strongly than this, sufficient
24 530. The Japanese-American Negotiations, §§67-70
25 (T. 43,678-98).

that the Tribunal cannot find the conclusion grounded
1 in them to have been an unreasonable one. That the
2 Hull Note was regarded in the same way by all Japanese
3 who passed judgment on it--by the Japanese Ambassadors
4 in the United States, the Liaison Conference in Japan,
5 Cabinet, Supreme War Council, Elder Statesmen--we
6 have seen; there is no evidence of dissent from that
7 view by any Japanese of high station. Such a unanimity
8 of opinion can only suggest by application of the test
9 universally recognized that the opinion cannot have
10 been unreasonable.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mention of the Elder Statesmen is a reminder
1 that something must be said of their meeting of 29
2 November. After the Liaison Conference had informally
3 decided that war would have to be undertaken, and
4 before the formal decision of the Imperial Conference
5 of 1 December was asked, a meeting of the Elder States-
6 men was convoked to give their advice to the Throne.
7 The prosecution reiterate the assertion that the
8 opinion of the Elder Statesmen of the necessity for
9 war imposed by the Hull Note, opinion according with
10 that of all other responsible persons, had no validity
11 because "all really vital material was withheld" from
12 them,⁵³¹ they being given only "such information as
13 the Government was prepared to disclose."⁵³² So far
14 at least as concerns the diplomatic negotiations,
15 this assertion is not supported by the evidence. That
16 evidence is an excerpt from the KIDO Diary, recording
17 the meeting, and the testimony of Admiral OKADA, one
18 of the Elder Statesmen participating. Admiral OKADA
19 testified that certain figures and statistics were
20 withheld from the Elder Statesmen on the plea of
21 military secrecy -- the same condition which the
22 Foreign Minister had encountered in the Liaison Confer-
23 ence⁵³³ -- matters which may well have affected the

531. Summation, G-132, Tr. 39,680.

532. Id., WW-32, Tr. 41,925.

533. Testimony of T000, Tr. 35,695.

Elder Statesmen's ability to pass intelligently on
1 the prospects of war. But he made it absolutely
2 certain that nothing was withheld of the diplomatic
3 matters which showed the circumstances in which the
4 commencement of war had been decided to be necessary.
5 The cross-examination of him on that subject was:

6 "Q You have already said, Mr. Witness, that
7 at the meeting of 29 November 1941 explanation was
8 given by the Foreign Minister, TOGO, concerning the
9 Japanese-American negotiations. Can you state to the
10 Tribunal to what extent such explanation was made?
11

12 "A TOGO explained the progress of the Japanese-
13 American negotiations in considerable detail.
14

15 "Q Were questions put to the Foreign Minister
16 on this subject by the Elder Statesmen present?
17

18 "A I believe two or three questions were put
19 to him.
20

21 "Q Did Mr. TOGO, the Foreign Minister, give
22 answers to such questions as were put to him?
23

24 "A Yes, TOGO replied to those questions, and I
25 believe that those who asked questions were satisfied
with his answers." 534

The KIDO Diary, as corrected (the prosecution
summations make no mention of the completely revised
534. Tr. 29,314-15.

and corrected exhibit, read into the record by a
prosecutor, but cite the original and admittedly
incorrect version) ⁵³⁵ shows that Prince KONOYE, who,
having been engaged in the Japanese-American negotia-
tions until six weeks earlier, and being still in
touch with informed circles -- was well-advised con-
cerning them, expressed himself as content with this
explanation and as satisfied that diplomacy could do
no more:

"I deeply regret that I have not been able
to do anything toward the adjustment of Japanese-American
relations despite my efforts since last April. But I
beg to express my appreciation to the present cabinet
for zealously striving to attain this end. To my
great regret I am forced to conclude, on the basis of
this morning's explanation by the Government, that
further continuation of diplomatic negotiations would
be hopeless. Still, is it necessary to resort to war
at once, even though diplomatic negotiations have
been broken off? Would it not be better, I wonder,
while carrying on things as they are -- to later find
a way out of the deadlock by persevering to the utmost
under difficulties?" ⁵³⁶

535. Summation, G-132, Tr. 39,680 and WW-32,
Tr. 41,925.

536. Ex. 1196, Tr. 16,188. See also testimony of
TOGO, Tr. 35,711-12.

Precisely the question which Foreign Minister
1 TOGO had asked, in almost his very words.
2 That the Hull Note was regarded on the American
3 side of the Pacific as well to be such as would have
4 the natural effect of forcing Japan into war has been
5 well established by the evidence. ⁵³⁷ That Mr. Hull,
6 after delivering the document to the Japanese Ambassadors,
7 stated that he had placed the matter "in the hands of
8 the Army and Navy" but confirms the interpretation
9 placed by Japanese on his note. It is submitted that
10 it is impossible for the Tribunal to find to be unreason-
11 able the belief of the author of the document concerning
12 its effect, or that same belief when shared by Japanese.
13
14 106. And, lastly, a word on the law of self-
15 defense in regard to the Hull Note. The question has
16 been discussed perhaps almost ad nauseam; but it is
17 nevertheless necessary that a word be said in express-
18 ion of Mr. TOGO's own views. As he has testified, he
19 felt that the war which was waged against the United
20 States and her allies was one of self-defense; he has
21 stated fully his reasons for this belief. ⁵³⁸ He has
22 mentioned also that he felt particularly that if the
23 broad interpretation of the right of self-defense which
24
25 537. The Japanese-American Negotiations, §70,
Tr. 43,693-98.
538. Tr. 36,128, 36,135-38.

the United States was contending for in 1941, during
1 the negotiations, was correct, the case was even
2 clearer.⁵³⁹ It will be remembered that that American
3 interpretation was, as stated by Secretary of State
4 Hull, that the safety of the United States "calls for
5 resistance wherever resistance will be most effective."⁵⁴⁰
6 President Roosevelt had stated it even more broadly:
7 "We in the Americas will decide for ourselves whether
8 and when and where our American interests are attacked
9 or our security threatened."⁵⁴¹ The prosecution
10 disagrees with this American interpretation. Their
11 doctrine is that, "of course",
12 "the validity of all self-defense pleas must
13 depend on the facts. We cannot subscribe to the theory
14 that leaders of nations any more than individuals can
15 decide such matters for themselves. . ."⁵⁴²

President Roosevelt, nevertheless, enunciated
17 and put into execution the theory that a nation not
18 only was the sole judge of the requirements of its
19 self-defense -- in itself no new idea, but long
20 affirmed by every nation and every authority on the
21 subject.⁵⁴³ -- but might exercise the right even at

23 539. Tr. 35,718.

24 540. Ex. 2874, Tr. at 25,719.

541. Ex. 2874, Tr. 25,724.

542. Summation, § 37, Tr. 38,890.

25 543. See for example explanations of Secy. Kellogg
to Committee on Foreign Affairs, Senate of U.S.
of the scope of the Kellogg-Briand Pact.

such points remote from its territory as it saw fit
1 by stationing its military forces there or by attack-
2 ing (as in the case of the "shoot-on-sight" instruc-
3 tions given the American Navy for its guidance vis-a-
4 vis German and Italian vessels in the North Atlantic.)
5 This course of conduct of the United States, as well
6 as the transfer of a substantial part of
7 the Navy of the United States to Great Britain for use
8 against Germany, has been defended by eminent author-
9 ties as being "the elementary right of anticipatory
10 self-defense in a situation in which belated defense,
11 according to the textbook rules of the strictest tech-
12 nical neutrality, would very probably have proved
13 fatal . . ." ⁵⁴⁴ If so to act was an elementary right
14 of the United States, it must have been action proper
15 for Japan; if American was to "decide for herself"
16 its necessity, Japan cannot be denied the same
17 latitude. Here is no such doctrine as the prosecution
18 advance, that action in self-defense is justifiable
19 "only in the case of a reasonably anticipated armed
20 attack"; ⁵⁴⁵ but if that were the correct doctrine,
21 there is ample evidence which makes it impossible to

24 544. Glueck, "The Nuernberg Trial and Aggressive
25 War", 59 Harv. L. Rev. (1946) 449.

545. Summation, B-16.

say that the leaders of Japan were unreasonable in
1 expecting just that by November 1941. From August
2 there had been growing reason to believe that the
3 United States and Britain had determined to pursue
4 their policy at the risk of war with Japan;⁵⁴⁶ in
5 view of which their strengthening of their measures
6 of military encirclement of Japan⁵⁴⁷ was believed
7 in Japan to be action taken in anticipation of war.⁵⁴⁸

107. After the decision for war had been
made by the Imperial Conference of 1 December,
questions of procedure remained to be settled. In
connection with these, which came up for decision at
meetings of the Liaison Conference following 1 December,
there is no conflict in the evidence so far as concerns
the decisions made and the actions taken pursuant to
them. Regarding one incident leading up to a decision
there is a sharp dispute among the defendants, which,
it being not without a certain interest, we shall
return to deal with later. Leaving that, however,
for now, let us hear the story of decision of the final
measures in the words of the one who knows it best,
Foreign Minister TOGO:

546. See Japanese-American Negotiations, §82,
Tr. 43,734.

547. Tr. 36,338-44, 36,353-55.

548. Tr. 36,355, 36,358-59.

"These questions of procedure," he says, "came up at the first Liaison Conference following the Imperial Conference. At this meeting I asked when operations would commence, General SUGIYAMA, Chief of the Army General Staff, said, 'about next Sunday.' I thereupon said that it was appropriate that the usual and customary procedure be followed in regard to notifying the commencement of hostilities, which I had assumed would be done as a matter of course. I was immediately met, however, with the statement by Admiral NAGANO, Chief of the Naval General Staff, that the Navy wished to carry out a surprise attack, and by the demand by Vice Chief ITO that the negotiations be left unterminated, in order that the war might be started with the maximum possible effectiveness. I rejected this suggestion, saying that it was contrary to the usual practice and highly improper, and that such conduct would be disadvantageous because, even if we were going to war, there would be a time when the war would come to an end and we would be a nation at peace again, and we should think of our national honor and repute against that day before committing irresponsible acts at the war's beginning. I had received a telegram from our Ambassadors in Washington actually discussing this very point and urging that if Japan was going to resort to 'freedom of

action' a notification of the breaking off of negotiations should be given also in Washington (Exhibit No. 2929), and I quoted this to the meeting to show that my suggestion was the natural and normal one and that notification was absolutely necessary as a matter of international good faith. However, Admiral NAGANO continued to contend strongly that if we were to go to war we must win. None among the members came to my support; which is perhaps the best explanation for the fact that none of them now remembers this altercation. I was disgusted by the Navy's position, and took the initiative in adjourning the Conference, without any decision's having been reached. Immediately upon my arising from my seat, Admiral ITO came to my place and pleaded with me to understand the difficult position of the Navy, and suggested that in any event the notice breaking off negotiations, if one must be given, be given to the American Ambassador in Tokyo, rather than in Washington. I refused, and we parted without any agreement. I felt, nevertheless, that he recognized that the Navy would have to agree to giving somewhere a notification of termination of negotiations before attacking.

"Upon the opening of the following Liaison Conference Admiral ITO announced that the Navy had no

objection to delivering the notification of termination
1 of the negotiations in Washington, and requested that
2 the notice be delivered at 12:30 P.M., 7 December,
3 Washington time. No one opposed. . . . It was therefore
4 so agreed.⁵⁴⁹

5 Here, then, was the first limitation imposed
6 by the Liaison Conference upon this matter of so much
7 concern to the Foreign Minister; he had been overruled
8 in his insistence that a declaration of war should be
9 served upon the enemy-nations-to-be -- the "usual and
10 customary procedure" -- and limited to a notification
11 breaking off the Japanese-American negotiations, to be
12 served upon the United States. The interesting point,
13 which we shall return to, is that the final "diplomatic"
14 document was decided, not on a diplomatic, but on a
15 strategic basis.

17 108. In connection with this incident of the
18 Navy's insistence on attack without notice -- the "ITO
19 Incident", as it has come to be known -- I am compelled
20 to the distasteful task of investigating the elaborate
21 effort which has been made by a co-defendant to prove
22 that it never happened, but is a fabrication by Mr. TOGO.
23 Let us be quite clear about the significance of the
24 question. The ITO Incident as such is of no special
25

549. Tr. 35,714-16.

concern to Mr. TOGO. It was mentioned in his testimony,
1 just quoted, as showing how it came about that the
2 Liaison Conference imposed the limitation upon the
3 notice which might be given when hostilities were
4 commenced, limiting the notification to one of termina-
5 tion of negotiations instead of a formal declaration of
6 war -- the "usual and customary procedure." But if it
7 never happened, that Admiral ITO objected to the service
8 of a declaration of war in the customary manner, somebody
9 did. For no defendant has yet denied that Foreign
10 Minister TOGO did open the Liaison Conference discussion,
11 as he has testified to having done, with the suggestion
12 that the "usual procedure" should be followed; no
13 defendant has yet denied that the Liaison Conference
14 decision was that which Mr. TOGO has testified to, that
15 a notification of termination of negotiations should be
16 delivered in Washington; no defendant cross-examined
17 Mr. TOGO on those points. Let me repeat this: to this
18 day no defendant or defendant's witness has ever, at
19 any time or place, testified, said or intimated that
20 the Liaison Conference decision was not exactly as
21 testified to by Mr. TOGO, that there should be served
22 only a notification to the Government of the United States
23 ending the negotiations, and not an outright declaration
24
25

of war. If Mr. TOGO made his proposal, which he is
1 admitted to have done, and the Liaison Conference
2 decision was nevertheless the much more restricted one,
3 which it admittedly was, someone must have made the
4 suggestion that it be limited. Unless that course had
5 been suggested, by Admiral ITO or someone else, the
6 decision to follow it would not have been made, and
7 Foreign Minister TOGO's proposal would have been
8 adopted. None of the defendants who has denied occur-
9 rence of the ITO Incident, however, has in denying it
10 mentioned who may have made that suggestion if it was
11 not Admiral ITO. But to decision of the issues of the
12 case of Mr. TOGO it is a matter of complete indifference
13 whether it was Vice Chief of the Naval General Staff ITO,
14 or someone else, who first raised in the Liaison Confer-
15 ence the suggestion that that decision should be taken
16 which was taken -- whether there was an ITO Incident,
17 or a NAGANO Incident, or a SUGIYAMA Incident, the
18 suggestion must have been made, for only on that hypothe-
19 sis is the subsequent decision explicable.
20
21
22
23
24
25

Y
e
l
d
e
n
&
W
h
a
l
e
n

109. While, however, the ITO Incident has
in this sense no special significance to the case of
Mr. TOGO, I must nevertheless notice it in detail as
the one determined, skillful and long-planned attempt
which has been made from any quarter upon the credi-
bility of Mr. TOGO. The defendant Admiral SHIMADA has
devoted to this question just under one-tenth of his
⁵⁵⁰ summation, in the effort to prove that there never
was such an occurrence. His concern with it is the
more extraordinary in that he is ostensibly defending,
not himself (whom Mr. TOGO specifically absolved of
⁵⁵¹ having had any part in the disgraceful incident), but
the memories of the Chief and Vice Chief of the Naval
General Staff, an organization with which he was not
officially connected at the time and for which he pro-
fesses to have no responsibility. Curiously, any pos-
sible plausible motive for Mr. TOGO's manufacturing
such an incident is in no place even hinted at, the
only one ever suggested being absurd on its face--to
escape a "sense of guilt" over the late delivery of
⁵⁵² the final note, which all evidence in the case has
shown conclusively to have been the result of no fault
550. SHIMADA Summation, 8854-a-61-b (T. 45,420-31).
551. T. 35,834.
552. Testimony of SHIMADA (T. 37,037-45).

25

553

of the Foreign Minister. On the other hand, the
reasons motivating the seemingly gratuitous attack
made upon him have some bearing on the issues in the
case. We shall come to those a little later.

Counsel for Admiral SHIMADA warns the Tribunal
against "such comment as may be forthcoming in the ex
parte safety of" the summation on behalf of Mr. TOGO;
but in his anxiety he forgets that a summation is not
ex parte, because it grows out of the record of pro-
ceedings which were adversary. If that record supports
him and not me, I will be found out soon enough. Let
us examine it briefly.

13 110. The SHIMADA Plan involves the attempt
14 to show by testimony of all participants in the Liai-
15 son Conference where the ITO Incident occurred that
16 none can remember it except Mr. TOGO himself and
17 YAMAMOTO Kumaichi, who being a Foreign Ministry official
18 presumptively would, it is suggested, corroborate
19 Mr. TOGO's testimony out of mere loyalty. Mr. YAMAMOTO,
20 by the way, gave his testimony to this effect when
21 under cross-examination as a witness on behalf of the
22 defense generally, and in the circumstances that Ad-
23 miral SHIMADA and all other defendants knew that such

553. The Japanese-American Negotiations, §76
(T. 43,711-18). *s-2; (m. 45-127)*

554. SHIMADA Summation, §58-b (T. 45,427).

would be the purport of his testimony--for only after
it was stricken from his affidavit did Admiral SHIMADA
consent to his testifying as a defense witness. His
testimony in general is not now repudiated by Admiral
SHIMADA, but is cited repeatedly in his summation as
sustaining his contentions.

The SHIMADA Plan is adroitly conceived. Admiral SHIMADA testified that he and Admiral NAGANO jointly questioned every one of the accused who had attended the Liaison Conferences, including TOJO, SUZUKI, KAYA, HOSHINO, OKA and MUTO. None of them except TOGO remembered such a thing occurring." 556

"Counsel on every possible occasion", he says, "sought to question any accused regarding the alleged naval opposition to the giving of notice who took the witness box." This plan did not prove satisfactory in practice. Mr. HOSHINO not having taken the witness stand, Admiral SHIMADA's quotation of him has no more probative value than the remainder of the Admiral's own testimony. General SUZUKI--oddly--when he was giving testimony, was not examined on this point by counsel for Admiral SHIMADA. Only after cross-examination of him by the prosecution was a pretense of attempt

555. T. 25,897.

556. T. 34,675.

557. T. 35,835; SHIMADA Summation, 556-a (T. 45,425).

1 made to extract what was obviously direct testimony,
2 when it was known that under the standing rules of pro-
3 cedure of the Tribunal the attempt was not timely and
4 must fail. The failure to examine in good season on
5 the point which counsel had himself undertaken to con-
6 test vigorously, and on which his client had quoted
7 General SUZUKI, is most suggestive of the answer which
8 would have been given by that witness.

9 Admiral SHIMADA, of course, from the witness box
10 558
11 denied occurrence of the affair, as did his satellite
12 Admiral OKA; the defendants TOJO, KAYA and MUTO testi-
13 fied with varying degrees of definiteness to lack of
14 recollection on the point. Of these General TOJO was
15 559
16 quite definite; the remainder gave evidences of having
17 suspiciously better recollections than they cared to
18 admit. These include Admiral SHIMADA himself, whose
19 case we shall consider in a moment; Mr. KAYA, whose
20 560
21 testimony was merely that "I do not recall"; (but who
22 also seems to intend to deny that he was present at
23 any Liaison Conference when the matter of the final
24 Japanese note was discussed); and General MUTO. The
25 latter "did not remember at all" the ITO Incident, though
he admitted that "I have forgotten many things, of

558. T. 34,673-74.

559. T. 36,528.

560. T. 30,657.

561. Ibid.

1 562
2 course." But he obviously had a keen recollection of
3 some passage in the Liaison Conference between Admiral
4 ITO and Foreign Minister TOGO, for he testified that
5 he did remember hearing ITO express the Navy's desire
6 to "harmonize the time of delivery and naval action",
7 delivered as late as possible; the euphemistic char-
8 acter of this language can be readily recognized.
9 563

10 Admiral OKA, when interrogated by the prosecu-
11 tion long before the idea of burking this affair
12 had been thought of, specifically admitted memory of
13 the ITO-TOGO discussion, though contending in the wit-
14 ness box that he had been misquoted. He had been asked,
15 on 30 March 1946, "Do you recall there was some dis-
16 cussion between TOGO, the Foreign Minister, and Admir-
17 als NAGANO and ITO regarding notification of the United
18 States prior to any attack?" and had answered, ac-
19 cording to the stenographic record of the interroga-
20 tion, "I recall it." Being further asked, after two
21 questions on another matter, "What was the gist of the
22 conversation between TOGO, NAGANO and ITO regarding
23 notification prior to any attack?" he had answered "I
24 564
25 don't know." On the witness stand his explanation was

562. T. 33,156.

563. T. 33,175-76.

564. Ex. 3653, (T. 36,143, not read).

that his reply to the first question had been "exactly
1 opposite to that which you have just read." It is
2 difficult in any language for a reporter to make the
3 error of writing "Yes" when the witness has said "No".
4 If his answer to the first question had been "No",
5 his answer to the second would not have been "I don't
6 know"; it would have been, "I have just said that I
7 remember no such conversation." In court he admitted
8 having answered the second question in three words as
9 shown in his interrogation, but claimed that he had
10 given also to the interrogator a further answer which
11 covers half a page of the record, but which the inter-
12 rogator somehow failed to hear, for nothing of this
13 appears in the interrogation. He also, he said, ex-
14 plained to the interrogator that owing to the way of
15 conducting the Liaison Conference, no one could deny
16 with conviction that a given remark had not been made.
17 His counsel attempted to come to his rescue by pointing
18 out other parts of the interrogation; but the position
19 remained unchanged.

21 III. For this loss of memory by the various
22 defendants who attempted to come to the support of
23 Admiral SHIMADA and the "honor of the Japanese Navy",
24

25 565. T. 33,445.

566. T. 33,446.

567. T. 33,447.

1 memory is one which may be stated and left without
2 argument. It was pointed out by Mr. TOGO: in the
3 dispute between him and Admiral ITO "none of the mem-
4 bers came to my support; which is perhaps the best
5 explanation for the fact that none of them now remem-
6 bers this altercation."⁵⁷² If these defendants could
7 forget matters so vital to the question of their
8 liability as those which General TOJO and Admiral OKA
9 have just been seen to have forgot, they could no
10 doubt most readily forget one showing them in such a
11 light as does their failure to support Mr. TOGO in
12 opposition to the ITO proposal.

13 The third reason involves exploring some by-
14 paths. After Mr. TOGO testified to the ITO Incident,
15 he was cross-examined concerning the matter by counsel
16 for Admiral SHIMADA. He stated then that Admirals
17 SHIMADA and NAGANO had proposed a talk with him, at
18 which time they had in effect admitted that it had
19 been their desire in December 1941 to commence the
20 war by attack without notice,⁵⁷³ but had suggested that
21 "it would not be worth my while" to mention it, which
22 words--he said--were "something in the nature of a
23 threat."⁵⁷⁴ Promptly after this testimony was given,

25 572. T. 35,715.

573. T. 35,840.

574. T. 35,838.

three reasons are suggested by the evidence. One is a
1 genuine failure of memory--a point which Mr. TOGO had
2 occasion to mention in cross-examination. He had men-
3 tioned, for example, that until he reminded them of
4 it in Sugamo Prison all of the defendants who had par-
5 ticipated in it had forgot such an important matter
6 as the fact of the 5 November Imperial Conference--a
7 lapse of memory shown by evidence in the record to
8 have been a fact in the case of Premier TOJO himself.
9 Admiral OKA admitted here in cross-examination that
10 when interrogated in Sugamo he had quite forgot that
11 he had ever taken any part in the drafting or revision
12 of the final Japanese note, though since the beginning
13 of the trial he has remembered, with the assistance of
14 a former subordinate, that he had proposed a revision
15 which he now considers quite important to his case.
16 Admiral OKA's testimony in this Tribunal is eloquent of
17 the extent of his ability or willingness to remember:
18 in the course of fifty pages of his cross-examination,
19 we find more than forty times his answer that he had
20 "no recollection" of his personal participation in
21 matters of more or less importance.
22

23 A second reason for the defendants' loss of
24

- 25 568. T. 35,835.
569. Ex. 1158-A (T. 10,309).
570. T. 33,441-43.
571. T. 33,466-515.

1 memory is one which may be stated and left without
2 argument. It was pointed out by Mr. TOGO: in the
3 dispute between him and Admiral ITO "none of the mem-
4 bers came to my support; which is perhaps the best
5 explanation for the fact that none of them now remem-
6 bers this altercation."⁵⁷² If these defendants could
7 forget matters so vital to the question of their
8 liability as those which General TOJO and Admiral OKA
9 have just been seen to have forgot, they could no
10 doubt most readily forget one showing them in such a
11 light as does their failure to support Mr. TOGO in
12 opposition to the ITO proposal.

13 The third reason involves exploring some by-
14 paths. After Mr. TOGO testified to the ITO Incident,
15 he was cross-examined concerning the matter by counsel
16 for Admiral SHIMADA. He stated then that Admirals
17 SHIMADA and NAGANO had proposed a talk with him, at
18 which time they had in effect admitted that it had
19 been their desire in December 1941 to commence the
20 war by attack without notice,⁵⁷³ but had suggested that
21 "it would not be worth my while" to mention it, which
22 words--he said--were "something in the nature of a
23 threat."⁵⁷⁴ Promptly after this testimony was given,

25 572. T. 35,715.

573. T. 35,840.

574. T. 35,838.

1 Admiral SHIMADA's counsel announced that the Admiral
2 had upon hearing it made known his desire to "take the
3 stand again." Leave being subsequently granted to him,
4 he did so; but as it developed, he took the stand, not,
5 as his surmation has it, to "refute" Mr. TOGO's words,
6 but "for the purpose of denying (Mr. TOGO's) inter-
7 pretation of our conversation"--to admit occurrence
8 of the conversation just as testified to by Mr. TOGO,
9 tacitly to admit use of the very words quoted by Mr.
10 TOGO, but to state that in his opinion they did not
11 constitute "something in the nature of a threat", and
12 to pass in silence Mr. TOGO's charge that he and Ad-
13 miral NAGANO had at that conversation in effect ad-
14 mitted the truth of what Mr. TOGO now testified to.
15 In view of this, the nature of the NAGANO-SHIMADA
16 "questioning" of the other defendants can be left to
17 the imagination. In fact, asked specifically to
18 "answer 'yes' or 'no'", whether he had made "any fur-
19 ther threats at any other time to Mr. TOGO", his
20 answer was carefully qualified: "Not I, myself." Who,
21 then?

23 575. T. 35,859.
24 576. See any standard dictionary of the Japanese lan-
25 guage to learn whether "kini no tame ni naran darō"
"it will not be to your interest", the words
which Admiral SHIMADA did not deny using, (would
when spoken by two incensed admirals) constitute
"something in the nature of a threat."

577. T. 37,029-31.

578. T. 37,046.

1 In summation, it is now pointed out that
2 counsel for Mr. TOGO did not cross-examine Admiral
3 SHIMADA on this testimony. It was unnecessary; the
4 testimony did not constitute contradiction of Mr. TOGO's,
5 and showed that there would have been no reason to
6 approach Mr. TOGO except to threaten him.

7 112. Admiral SHIMADA had been cross-examined,
8 on behalf of Mr. TOGO, on his first appearance in the
9 box. His testimony was then that he had no clear recol-
10 lection of having seen the final Japanese note before
11 it was delivered to the United States on 7 December
12 1941--and he added the embellishment that he did not
13 believe the testimony of Admiral OKA to the effect that
14 that note had been distributed in the Liaison Confer-
15 ence. He was then asked whether he had said, in inter-
16 rogation by the prosecution prior to the commencement
17 of these proceedings, that he had seen that draft, and
18 had then replied that he had.

19 "Q Well, I somewhat recall that, but at the time
20 my recollections themselves were very vague.
21

22 "Q You recall that you did say it, but you think
23 your recollection is better now, is that it?

24 "A At that time when I was interrogated on var-
25 ious questions I had not thoroughly surveyed and
studied the situation on which I was being interrogated.

1 Later, as a result of trying to recall my memory, I
2 have come to the result which I have already spoken to
3 you about in connection with my present state--the
4 present state of my recollection.

5
6 "A To state the facts as directly and frankly
7 as possible, I actually read the document for the first
8 time after I had been confined at Omori Prison. And
9 after receiving a copy of this note from the Foreign
10 Office, and after having read the document, I was rather
11 deeply impressed.

12 "THE HONITOKI: And knowing for the first time
13 what it was.

14 "A (continuing) And so I tried to trace back
15 the threads of my memory in connection with this ques-
16 tion, and I came to the conclusion that I had never
17 read this document myself before . . .

18 "Q Were you interrogated by the International
19 Prosecution Section at Omori Prison?

20 "A No.

21 "Q Where?

22 "A At Sugamo.

23 "Q That is after you had been at Omori Prison, is
24 it not?
25 "A Yes." 579

If, reading the document at Onori, he realized that he
1 then saw it for the first time, he could not soon af-
2 terward at Sugano, "because he had not studied the
3 situation", have had a vague recollection when he talked
4 to the prosecution about the matter. Thus does he
5 destroy his own credibility. With its protagonist
6 falls the SHIMADA Plan.

Nor did he survive any better his second ap-
pearance on the witness stand. In his direct testimony
he stated that in May 1946 Admiral NAGANO, hearing of
Mr. TOGO's mention to the prosecution of the ITO Inci-
dent, and becoming "inconsed", came to him and asked
whether he, Admiral SHIMADA, recalled the occurrence.
He did not, he said--although as he pointed out to Ad-
miral NAGANO, as Navy Minister he certainly should have
remembered it had f't happened. The two then questioned
the other defendants "in order to dispel any doubt
whatsoever." Now the statements of the other defend-
ants could dispel any doubt--which, as he had said
never existed anyway--in the case of such an incident
which, if it had not happened, he could certainly never
have had any doubt was a fabrication is an interesting
point. On cross-examination by the prosecution, more-
over, Admiral SHIMADA said that when he first heard of
580. T. 37,030.

1 the matter from Admiral NAGANO he "did not immedi-
2 ately become incensed."

3 "Q. How long did it take you to become
4 incensed?

5 "A. After investigating the matter and
6 trying to call back my memories on this point, as
7 well as ascertaining the recollections of other
8 members who had been present at the Liaison Confer-
9 ence, it became clearly apparent that TOGO was not
10 telling the truth and therefore it was but natural
11 that for the sake of the Navy I should become incensed."⁵⁸¹

12 Not at all. It was but natural, if Mr.
13 TOGO's story was a falsehood, that for the sake of
14 the Navy he would have become incensed immediately
15 upon hearing it for the first time--no need to wait
16 to try to call back memories, when if the incident
17 had never happened he must have known the falsehood
18 at once for what it was; no need to have the testi-
19 mony of other defendants to support him in his
20 defense of the "honor of the Japanese Navy." If you
21 ask me whether I have seen a murder committed, I
22 have no need to search my memory; if I have, I can
23 never forget it, and I know that I cannot have forgot
24 it if it happened. Admiral SHIMADA would know that

581. Tr. 37035.

1 if ever the honor of his Navy had been murdered
2 before his eyes, he could never have forgot it, and
3 need not search his memory to see whether he had.
4 Far less could he have any interest in the memories
5 of others. He would have become incensed immediately
6 upon first hearing such a false slander. The only
7 explanation, consistent with ordinary human nature,
8 of this delay in becoming incensed, is that the
9 admirals did not become incensed until, having con-
10 ceived their plot of destroying all record of the
11 incident--the SHIMADA Plan--having persuaded or in-
12 timidated all others having knowledge of it to
13 "forget," they became "incensed" ten or fifteen
14 minutes before going to tell Mr. TOGO that "he should
15 be more careful about the truth,"⁵⁸² or that "it
16 would not be worth his while" to mention the matter.

17 "113. Many other circumstances confirm that
18 the ITO Incident is no fabrication. General TOJO
19 has testified that the Emperor on more than one
20 occasion enjoined him to exercise the utmost care to
21 insure that Japan's declaration of war should be
22 delivered prior to commencement of hostilities."⁵⁸³
23 No reason suggests itself for the Emperor's having

24 582. Tr. 37031.

25 583. Tr. 36390.

1 said such a thing, if he did, unless he had heard of
2 the Navy High Command's proposal; there is no proof
3 of gratuitous Imperial exhortations, in other
4 matters, to obey the law. Admiral SHIMADA himself,
5 moreover, testified to a curious incident which can
6 be explained on no other hypothesis than that of his
7 knowledge of the ITO Incident. "Both the Navy General
8 Staff under Admiral NAGANO and the Combined Fleet
9 under Admiral YAMAMOTO swore to me," he testified,
10 "that the provisions of international law would be
11 observed * * *."⁵⁸⁴ How odd, that top-ranking
12 admirals of the Japanese Navy should occupy themselves
13 with exchanging such vows--unless Admiral SHIMADA,
14 having with shame been present at the time of the
15 ITO Incident, had out of his pride for his Navy
16 (the genuineness of which no one doubts) and his
17 solicitude for its good name, the extent of which
18 this whole controversy with Mr. TOGO illustrates,
19 extracted from them their assurance not to do that
20 which would bring disgrace upon it.

22 Above all, Mr. TOGO had testified not only
23 to the ITO Incident, but also that Admiral NAGANO
24 had stated at the same Liaison Conference that the
25 Navy "wished to carry out a surprise attack."⁵⁸⁵

584. Tr. 37040.

585. Tr. 35714.

This has never been denied, by Admiral SHIMADA or
anyone else. Admiral SHIMADA himself did not deny,
at the time of his reappearance as a witness, that
Admiral NAGANO, in the course of the NAGANO-SHIMADA-
TOGO conversation, had admitted having made this pro-
posal to the Liaison Conference but had said in
effect that even though he had so proposed, the
Foreign Minister was not obliged to assent to it.⁵⁸⁶

Admiral SHIMADA's summation devotes some argument to
the question of two meanings of the term "surprise
attack one, an attack without a preceding declaration
of war; the other, an attack achieving tactical sur-
prise."⁵⁸⁷ This latter is a purely operational matter.

Admiral NAGANO's proposal to the Liaison Conference
is tacitly admitted in the summation to have been
made,⁵⁸⁸ but is contended to have been of the latter
kind. It remains to be explained for what possible
reason, if it was, it was brought up at the Liaison
Conference at all. The Liaison Conference, as is
shown by all the evidence in the case, had no concern
with and was not permitted knowledge of matters which
were purely of military operational or strategic

⁵⁸⁶. Testimony of TOGO (Tr. 35714-715).
⁵⁸⁷. Summation of SHIMADA, 54-a--61-b (Tr. 45420-30).
⁵⁸⁸. Id., (Tr. 45430).

concern.⁵⁸⁹ Admiral NAGANO's words in the Conference could not have referred to the operational question, which he would never have hinted to that body; it could have meant only the same thing as Admiral ITO's attack without service of notification. At the Liaison Conference Admiral NAGANO was participating in decision, not of operational naval problems, but of the national policy, and specifically the correlation of diplomatic formalities with naval operations; a "surprise attack," mentioned in such a context, can only be an attack which as a matter of national conduct, not of naval operations, should achieve surprise. He would not have mentioned "surprise attack" at all unless it had relation to the matter then under discussion, commencement of war and its relation to service of a declaration of war. It is submitted that this consideration alone would be conclusive whether the ITO Incident had real, or only fanciful, existence.

The SHIMADA Plan, it is submitted, has wholly failed.

114. The prosecution's treatment of the ITO
589. Testimony of TOGO (Tr. 35702); TOJO (Tr. 36391),
YAMAMOTO (Tr. 26097), and SHIMADA (Tr. 34818).

1 Incident deserves a word or two. They say that
2 "The exact details of this controversy need not
3 concern us here, since the final outcome adopted in
4 accordance with the proposal of this accused, was to
5 give a formal notice in an ambiguous form to be
6 delivered immediately prior to the attack."⁵⁹⁰ This
7 bland "the details need not concern us" is a curios-
8 ity, in view of the fact that the last hope of proving
9 a conspiratorial, a criminal or an aggressive intent
10 of Mr. TOGO's rests on proving him guilty of improper
11 conduct in this matter. However, the prosecution
12 proceed, despite this professed neutrality toward
13 the controversy, to assume "the details," and to
14 assume them contrary to all the evidence in the
15 case. Specifically: The "final outcome" was, as
16 we have seen, not "in accordance with the proposal
17 of this accused," who had proposed taking the usual
18 and customary procedure for starting a war. He
19 never proposed the giving of a notice in "ambiguous
20 form," which would not be "usual and customary pro-
21 cedure"--nor was the "final outcome" an "ambiguous"
22 notice.⁵⁹¹ His proposal was not to deliver the
23 notice "immediately prior to the attack"; for he did
24 notice "immediately prior to the attack"; for he did
25 notice "immediately prior to the attack"; for he did

590. Summation, WW-34 (Tr. 41929).

591. Summation for the Defense, Section "E", "Some Questions of International Law," Section 16, (Tr. 42441-46).

not know the time of attack and never proposed nor
1 mentioned any hour for delivery of the notice. As
2 we shall see later, these "details" do concern the
3 prosecution vastly; that is a matter which we shall
4 examine fully. But from this example of the prose-
5 cution's methods it will, I believe, readily be
6 recognized that to undertake a detailed answer to
7 their summation against Mr. TOGO individually is not
8 possible within any reasonable limits of time and
9 patience. That summation is packed with this type of
10 misstatement of the evidence and of fact in every
11 paragraph; it is self-contradictory and is in
12 contradiction of the general summations on the same
13 topics; it is filled with inferences purporting to
14 be drawn from evidence which, when turned to, is
15 often squarely opposite in effect to that which it
16 is stated to have. It is irresponsible and prejudicial
17 in effect if not in intent. I shall have to leave
18 the matter with this blunt statement; as time does
19 not permit of pointing out each of these details,
20 neither is it permitted by the endeavor to present
21 with clarity the real issues of the case. If the
22 Tribunal has any doubts in the matter, a brief
23
24 591. Summation for the Defense, Section "E", "Some
25 Questions of International Law," Section 16,
(Tr. 42441-46).

1 investigation of the summation in question will
2 soon dispel them. Henceforth I shall continue to
3 treat of what the evidence shows in regard to the
4 issues, referring to only the substantial points
5 posed by the prosecution's summation; that document
6 neither will withstand investigation nor is deserving
7 of refutation.

8 115. The type of notice and the time for
9 its delivery having been decided, there remained the
10 question of its contents. "The exact time on which
11 the final notification to the United States should
12 be delivered," say the prosecution, following the
13 lead of some of the defendants, "was left by the
14 Liaison Conference to the decision of the accused,
15 together with the High Command."⁵⁹² What was done
16 more specifically is in evidence through the testi-
17 mony of several witnesses, and again is disputed by
18 no one. As we have seen above, the question of the
19 time of delivery had come up when the Navy High
20 Command had agreed to service of a notification in
21 Washington. To return to Mr. TOGO's testimony for
22 the full account:

23 "Upon the opening of the following Liaison
24 Conference Admiral ITO announced that the Navy had

25 592. Summation, WW-35 (Tr. 41932).

1 no objection to delivering the notification of
2 termination of the negotiations in Washington, and
3 requested that the notice be delivered at 12:30 p.m.,
4 7 December, Washington time. No one opposed. I
5 inquired whether that would leave a sufficient time
6 before attack, and he said that it would. * * * It
7 was therefore so agreed.⁵⁹³

8 The time for delivery was thereafter changed
9 from 12:30 to 1:00 p.m. In Mr. TOGO's words, again:

10 "In the afternoon of 5 December the Vice-
11 Chiefs of Army and Navy General Staffs, General
12 TANABE and Admiral ITO, called on me. Upon entering
13 my office Admiral ITO stated that it was the desire
14 of the High Command to postpone delivery of the
15 final note in Washington from 12:30, as previously
16 agreed upon, to 1:00 o'clock, and asked my consent.

17 I feared that the time between notification and
18 attack might be made too short, and asked why the
19 change was desired. Admiral ITO said that he needed
20 the postponement only because of his own miscalcula-
21 tion of the time. General TANABE said that the
22 Army's operations would commence after those of the
23 Navy. I asked how much time was needed between

25 593. Tr. 35716; see also testimony of MUTO
(Tr. 33174) and TANABE (Tr. 35569).

notification and attack, but was told that the
1 operational plans were secret and could not be dis-
2 closed. I then insisted on knowing whether the
3 proposcd arrangement left an adequate time before
4 the attack, and upon receiving Admiral ITO's assur-
5 ance that it did, I agreed to the change. * * * The
6 agreement to change the time was reported to the
7 Liaison Conference by Admiral ITO on the 6th. No one
8 opposed this, and it was approved.⁵⁹⁴

9
10 The facts of this meeting are confirmed by
11 the testimony of General TANABE, one of the two
12 regular attendants at the Liaison Conferences of
13 those days not a defendant here;⁵⁹⁵ the report of
14 Admiral ITO to the Liaison Conference, by the testi-
15 mony of General MUTO.⁵⁹⁶

16 In this state of the facts, what can be the
17 meaning of the language that "the time for delivery
18 was left by the Liaison Conference to the Foreign
19 Minister and the High Command"? There seems to be
20 an implication of consultation; but all the evidence
21 is that the time was fixed by the Naval High Command,
22 first actually in the Liaison Conference, then as
23 changed presented to the Foreign Minister for his

24
25 594. Tr. 35721-22.
595. Tr. 35569-70.
596. Tr. 33175.

1 approval, and finally approved by the Liaison
2 Conference. It is idle to talk of consultation--far
3 more, as the prosecution do, of the Foreign Minister's
4 having been "appointed" by the Liaison Conference in
5 connection with fixing the time--when the Foreign
6 Minister could get no more definite answer concerning
7 the time between notification and attack than that it
8 would be "sufficient" or "adequate." He had nothing
9 to do with fixing the time; he did not consult over
10 it; the situation is precisely what Admiral SHIMADA
11 himself thrice admitted: that it was the Navy's
12 "demand" which was presented to the Foreign Minister
13 for his approval.⁵⁹⁷ It was not he to whom the time
14 was a vital matter; it was the Navy, for whom it
15 involved operational problems;⁵⁹⁸ it was not he, but
16 the Navy, who had demanded in the Liaison Conference
17 that the note be delivered as late as possible.⁵⁹⁹
18 Certainly the Foreign Minister would not be the
19 party interested in late or otherwise irregular
20 delivery.

21 116. The prosecution's purpose in "appoint-
22 ing" Foreign Minister TOGO one of a committee to fix
23 the time of service of the notification in Washington

24 597. Tr. 37042, 37043.

598. Testimony of TOGO (Tr. 35714-16).

599. Testimony of MUTO (Tr. 33176).

is to convict him of negligence or malice in
connection with the fact that delivery of the
notification was not made until after the war had
commenced. The argument involves first the assumption
that Foreign Minister TOGO knew not only the
time at which it was planned that the war would
commence, which was to have been with the Pearl
Harbor attack at 1:25 or 1:30 Washington time,⁶⁰⁰ but
as well the actual time at which the first attacks
on territories in various parts of Asia would, by
error or violation of orders, in fact take place.
It then involves maintaining the contention that--
contrary to his own denial and the implications of
every word of evidence in the case concerning the
methods and attitude of the High Command--Mr. TOGO
was advised when the attack would occur. The prosecu-
tion goes further, and half-assert the remarkable
proposition that he must have known the place of
attack, Pearl Harbor--a matter so secret that mention
of it was cut out of the Navy's top secret operational
orders before they were circulated among the highest
naval officials,⁶⁰¹ so secret that it was not
600. Summation for the Defense, Section "E", "On
Some Questions of International Law," Section
17, n86 (Tr. 42449).
601. Ex. 1252 (Tr. 11193), p. 7, (not read).

disclosed to the Supreme War Council,⁶⁰² and shown
1 by all the evidence to have been known to no cabinet
2 ministers except those of War and Navy.⁶⁰³ The
3 "evidence" which the prosecution consider to prove
4 these points is most amusing.⁶⁰⁴ First, that immediate-
5 ly after the attack on Pearl Harbor Admiral OKA
6 reported it by telephone to Mr. TOGO; "and there is
7 no evidence to show that this telephone call one hour
8 after the time set for delivery of the note evoked
9 any surprise"! The burden being, naturally, on the
10 defendant to prove his surprise. The prosecution did
11 not cross-examine Mr. TOGO about his surprise. Second,
12 that General TOJO "stated that when the accused came
13 to see him with President Roosevelt's message, he
14 mentioned that it was already too late because at
15 that very same time the Japanese planes were taking
16 off from the carriers"; from which words the Foreign
17 Minister, presumably, is to be supposed to have
18 deduced where the planes were going and when they
19 would arrive. General TOJO did not, of course,
20 testify as he is here quoted; he testified to having
21 said that he "was afraid that by this time the planes

23
24 602. Tr. 36331.
25 603. Testimony of TOGO (Tr. 35702), TOJO (Tr. 36826,
36391), SHIMADA (Tr. 34818) and TANABE (Tr. 35569).
604. Summation, WW-35 (Tr. 41932-34).

would be beginning to take off"; Mr. TOGO in any event denied that there was such a conversation at all.⁶⁰⁵ Third, "the Foreign Ministry acted for the military authorities in obtaining the military information regarding the Pacific area in general and Pearl Harbor in particular just before the outbreak of war"; and while admittedly there is no evidence that the Foreign Minister ever knew of such activities, the information was seen by his subordinates, wherefore apparently he should have known that Pearl Harbor was to be attacked--as well as, by a parity of reasoning, Batavia, Panama, Seattle, Vancouver, Portland and other points which were not in fact attacked.⁶⁰⁶ This routine of foreign offices throughout the world is so well known that no answer is needed to the argument that it is proof of knowledge by the Foreign Minister of when and where war would begin,⁶⁰⁷ nor to the several misrepresentations of the evidence contained in the paragraph.

21
22
23
24 605. Tr. 36142-43.
25 606. Testimony of YAMAMOTO (Tr. 26107).
607. Ibid.

M
O
R
S
E

117. There can scarcely be any doubt in the
1 Tribunal's mind, we suppose, of whether any civi-
2 lian cabinet minister was permitted knowledge of
3 these jealously-guarded secrets of the High Command.
4 The curious part of the prosecution's tortured at-
5 tempt to prove knowledge is that in the end they
6 admit that it is immaterial. "It is sufficient,"
7 they say, "that he did know there was to be an at-
8 tack within a short time after the hour fixed for
9 608
10 the delivery of the note." Here we can agree;
11 of course he know that -- he would have been an im-
12becile not to have deduced it -- and his knowledge
13 of it has no bearing on any issue. So long as he
14 was assured in his own mind that there would be a
15 lapse of time before attack, he would have been
16 guilty of no crime even if he himself had set the
17 time, in view of the fact that international law
18 has been content to leave it sufficient that any
19 609
20 period of time whatever elapse.

21 That Mr. TOGO was however satisfied in his
22 mind, and reasonably so, that there would be a con-
23 siderable interval between notification and attack
24 is, it is submitted, clear from the evidence. He

25 (608. Summation, SWW-35, Tr. 41,934
609. Summation for the Defense, Section "E",
"Some Questions of International Law",
§17, Tr. 42,446-51)

1 has testified in his affidavit that, knowing opin-
2 ion of international-law experts to be that even
3 one minute would suffice for compliance with the
4 Hague Convention providing for the giving of notice,
5 he was satisfied "that if a period of at least an
6 hour were allowed" it would be sufficient . He
7 was never told by anyone whether the time to elapse
8 would be an hour, or more, or less; his one at-
9 tempt to learn the fact was met with the rebuff
10 from Admiral ITO that it was an operational secret
11 which could not be divulged to him . In each in-
12 stanc:e when the Navy's demand for delivery at a
13 given tiem was presented, however, the Foreign Min-
14 ister had requested assurance from Vice-Chief of the
15 Naval General Staff ITO that there would be a "suf-
16 ficient" or an "adequate" time, and that assurance
17 was in each instance given to him . In view of
18 the fact that a naval general staff preparing to
19 initiate the hostilities of war would naturally
20 study the questions of procedure -- in addition to
21 which, as they have repeatedly shown by evidence
22 and contended by argument here, the Japanese Navy
23 leaders were specialists on the subject of international
24

25 (610. Tr. 35,723

611. Tr. 35,722

612. Tr. 35,716, 35,722)

1 law relating to war ⁶¹³ -- the Foreign Minister
2 cannot be considered, as he is suggested to have
3 been, negligent in accepting that assurance in a
4 matter in which he was entirely powerless to make
5 himself better informed.

6 His own concept of what would amount to a
7 "sufficient time" being that an hour or more would
8 suffice, he gave further explanation in cross-examin-
9 ation of why he had thought that there would be that
10 much or more time in this instance. The note was to
11 be delivered at 3 a.m. Tokyo time. "I felt," he
12 said:

13 "that it would be at least one hour after the
14 note was delivered that hostilities would com-
15 mence and that probably it would be two hours
16 or more before hostilities actually commenced." ⁶¹⁴

17 Asked to explain why he thought so, he said that in
18 the Liaison Conference of late October the High Com-
19 mand had been speaking of operations in "the South-
20 ern area", and in connection with such operations
21 had mentioned that

22 "**dawn was** a very suitable time for the opening
23 of hostilities. That is to say, they said

24 (613. Testimony of YANO, Tr. 26,456-57, TAKATA
Tr. 27,360-61, and SHIBA, Tr. 33,324-25.
614. Tr. 35,912)

that it would be most suitable and effective
1 if landing operations could be conducted in
2 this area at dawn. And when they referred to
3 . . . such subjects, I was assuming that they
4 were speaking about Malaya, the Philippines and
5 other points in that part of the world. As there
6 was not much difference in time, that is, dif-
7 ference in hours between this area which I had
8 just spoken and Japan, I thought that, if any
9 landing operations were to take place at about
10 dawn, the opening of hostilities would be taking
11 place shortly before then. Speaking in terms
12 of Japanese time . . . one p.m. in Washington
13 was about three in the morning in Japan, and
14 so I considered that it would be some time af-
15 ter this hour that hostilities would be commen-
16 ced. And so, if hostilities were to be commenced
17 just shortly before dawn, then I thought that
18 would be around five o'clock or a little after
19 that, and, therefore, hostilities would commence
20 two hours or maybe a little longer after that --
21 after the time of three o'clock Japan time".
22
23 It is difficult to know what more a civilian minister,
24 in this situation, could do to reassure himself than
25 (615. Tr. 36,141-42.)

thus to make his deduction from the information
1 available to him. He could certainly do no more
2 than he had done to insure that the time would be
3 sufficient.

4 As significant of Mr. TOGO's lack of know-
5 ledge of the short time which the Navy had actually
6 scheduled to elapse between notification and at-
7 tack, his reproaching of Admiral ITO after the com-
8 mencement of the war should be considered. Having
9 learned that the attack on Pearl Harbor had taken
10 place less than half an hour after the time for
11 which delivery of the note had been scheduled,

12 "a few days after the outbreak of the war when
13 Vice-Chief of the Naval General Staff ITO ex-
14 plained the matter to me I protested to him
15 that if the attack was to follow so soon on
16 the notification, I saw no reason for the Navy
17 to have objected to notification in the first
18 place. His reply was evasive -- to the effect
19 that "I am sorry for you; we cut it too fine" .
20 616

21 In the middle of December 1941 Mr. TOGO had mentioned
22 to General TANAKA Ryukichi, who testified to the
23 fact this incident of his rebuking Admiral ITO .
24 617

25 (616. Tr. 35,725
617. Tr. 35,546-47)

The occurrence should set at rest any speculation
1 whether Mr. TOGO knew when the attack was to occur,
2 and expected it to be within a very few minutes af-
3 ter 1 P.M. in Washington.

4 118. Lastly, the question of responsibility
5 for the contents, the wording, of the final note
6 must be touched upon. We have seen that the mili-
7 tary High Command were responsible for its form -- a
8 breaking off of negotiations -- and for the time of
9 its delivery; that they controlled its contents is
10 submitted to have been proved by the evidence. The
11 man who drafted it, Bureau Director YAMAMOTO, thus
12 describes the process:

14 14 "I had drafted the notification in accordance
15 with the decisions of various Liaison Confer-
16 ences; my draft had been submitted to the Army
17 and Navy Ministries, who made some suggestions
18 and changes, and it was then brought to the
19 Liaison Conference of 4 December and copies sub-
20 mitted to the participants, and in its final
21 form was approved by the Conference. . ." 618

22 The only evidence in contradiction of any part of
23 this testimony is that of Admiral SHIMADA, who
24 "doesn't believe" that the document was ever distributed
25

(618. Tr. 26,095-96)

to the Liaison Conference. Other defendants, however,
1 participants in the Liaison Conference, have affirmed
2 619 the fact . It is indubitable if anything can be
3 that the actual drafting of the note was the joint
4 work of Army, Navy and Foreign Ministries. This
5 was admitted by General TOJO, who said that
6

7 "the notification was drafted by the secre-
8 taries in accordance with the intentions and
9 desires of the Ministers, and the fact is
10 that the completed draft was proposed to and
11 discussed at the Liaison Conference on the
12 620
13 4th of December .

In this state of the record, the prosecution
14 have adopted a remarkable position. It is this:
15 "The drafting of the final note to the United States
16 was done primarily by Foreign Minister TOGO." 621 No
17 contention is made, naturally, that he did not ap-
18 prove the work of his subordinate; there is on the
19 other hand no evidence of personal participation by
20 Foreign Minister TOGO in the actual drafting. All the
21 evidence is that the contents of the note as drafted
22 by the American Bureau of the Foreign Ministry were
23 those dictated by Liaison Conference, War Ministry
24

25 (619. Testimony of TOJO, Tr. 36,389, TOGO, Tr.35,721
and OKA, Tr. 33,400.

620. Tr. 38,533
621. Summation 80-134, Tr. 39,682). Note also the
remarkable statement that "the final text was the
responsibility of TOJO and TOGO (Sum. SXX-67,
(Tr. 42,003)

and Navy Ministry, and by no means represent the Foreign Ministry's own ideas. Since in such circumstances it may be interesting to know to what extent the Foreign Ministry is responsible for the contents, we should note the language of the document itself. From a reading of the body of the note -- down through the first paragraph of section 7 -- one would suppose oneself to be reading the preamble of a declaration of war against the United States and Britain (President Roosevelt's estimate of it ⁶²²). The two countries are mentioned together and (allowing for the fact that there had been negotiations with the United States and none with Britain) treated alike; the language of the document is such as governments habitually, in justification of their course, state as the matter of inducement in declarations of war. Now, it will be remembered that the original draft had been prepared by the Foreign Ministry, which had commenced work on it several days before the Liaison Conference after 1 December which decided the form that it was to take ⁶²³; and here is the strongest possible proof that the Foreign Ministry had supposed in preparing its draft that it was going to require a declaration of war in conventional

(622. Ex. 2973-A, Tr. 26,256

623. Testimony of YAMAMOTO, Tr. 26,095-96)

form. As a result of the Liaison Conference decision
1 that only a notice of rupture of negotiations would
2 be given, a concluding paragraph to that effect was
3 added, in place of whatever may have been there orig-
4 inally; other changes, the nature of which is not
5 disclosed by the evidence, were made by the military
6 ministries; but the basic draft stands as it was
7 originally conceived, as a declaration of war. It
8 was plainly the intention of the Foreign Ministry to
9 deliver, and its expectation that it would be re-
10 quired to deliver, a conventional declaration of
11 war. That it did not is the result of the Liaison
12 Conference's decision, not of the Foreign Ministry
13 or the Foreign Minister's action.

15 119. These details of the drafting, form and
16 time for delivery of the final note are those which
17 the prosecution, somewhat earlier, said "need not
18 concern us." The way in which they do concern the
19 prosecution mightily become apparent when we read
20 on in their summation to learn that

21 "It may be true that the text of the final
22 note was approved by the Liaison Conference
23 and that its contents were reported to the
24 Cabinet without opposition. However, the
25 record of this trial is void of any suggestion

that, had the accused submitted a different-
ly worded document, it would have encountered
serious opposition from either the Liaison
Conference or the Cabinet".

The record of this trial on the contrary abounds with evidence that the Foreign Minister was absolutely precluded by Liaison Conference action from submitting any "differently worded document", in the sense of one of difference in substance rather than mere phraseology. He would certainly have encountered serious opposition if, after the Liaison Conference had decided that only the breaking off of negotiations was proper, he had submitted a conventional declaration of war. He would certainly have met with angry resistance if, the Liaison Conference having decided to serve in Washington a declaration going only so far, he had presented to it for its approval a declaration of war to be served upon the Government of Great Britain. The main body of the note even as it was finally approved shows what a differently-worded document the Foreign Minister would have presented had he not been limited by the Liaison Conference decision in what might be done. What an odd spectacle would be that of a foreign

1 minister who, having only after a struggle against
2 the insistence upon giving no notice at all won
3 agreement to the delivery of a notification discontinuing negotiations with the United States, should
4 report back a draft of a declaration of war against
5 the United States and Great Britain!

6 I fear, your Honors, that my discussion of
7 these details in connection with the final Japanese
8 note to the United States may have become tedious. I
9 have felt it necessary to treat it so extensively --
10 and much more, indeed, could be said of what is in
11 the record on this matter -- because I feel that without
12 correct and complete understanding of the subject
13 the responsibility and liability of Mr. TOGO cannot
14 be properly decided. Very much, there can be no
15 doubt of it, of the prosecution's case against him
16 revolves about this one point -- both legally, in that
17 he is charged with having been responsible for ar-
18 ranging treacherous attack, in violation of inter-
19 national law and of common decency, upon the United
20 States; and in that the fact of a note from Japan's
21 Foreign Ministry having been served upon the United
22 States after hostilities were actually in progress
23 has created against the Minister of that Ministry a
24 prejudice which the prosecution have utilized to the

full in presenting and arguing their case against
1 him. On the other hand, some of our codefendants
2 have attempted to utilize the same facts as their es-
3 cape from responsibility for Japan's foreign rela-
4 tions and her commencement of hostilities. I wish
5 now to discuss this question of responsibility; and
6 first, the defendants' contentions.

7 THE PRESIDENT: We will recess for fifteen
8 minutes.

9 (Whereupon, at 1445, a recess was
10 taken until 1500, after which the proceed-
11 ings were resumed as follows:)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

G
r
e
e
n
b
e
r
g

MARSHAL OF THE COURT: The International
military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: Page 253, Section 120:

120. Some mention was promised a few pages
back of the reasons for the maneuverings of Admiral
SHIMADA in connection with the ITO Incident. These
reasons I mention now in connection with their bear-
ing on the much bigger subject. So far as the ITO
Incident is concerned, the matter is as I have said
of no particular importance to Mr. TOGO except as it
affects his credibility. We have seen that there is
no reason for him to have fabricated the incident,
and the logic of the facts show that it must have
occurred. The suggestion of a motive attempted by
counsel for Admiral SHIMADA -- though not by his
client -- of "the openly expressed ill-feeling of the
accused TOGO for SHIMADA," fails in the face of
Mr. TOGO's categorical exoneration of Admiral SHI-
MADA of any part in the matter except that of a by-
stander, and of the fact that the whole question of
Admiral SHIMADA's connection with the affair and his
minatory attitude was mentioned by Mr. TOGO only
when it was brought up by counsel himself in cross-
625. SHIMADA Summation, 861-b (Tr. 45,431)

625. SHIMADA Summation, 861-b (Tr. 45,431)
affects his credibility. We have seen that there is
no reason for him to have fabricated the incident,

examination of Mr. TOGO.

1 On the other hand, the reasons impelling Ad-
2 miral S^TI_MADA thus to rush to the rescue of the Naval
3 High Command, staking on the venture even that last
4 of his prized possessions, his credibility, are plain
5 enough. They relate to the larger question. This
6 is the Admiral's way, more elaborate than that
7 adopted by most of the defendants, of trying to be
8 rid of his share of responsibility, as a powerful
9 member of the Liaison Conference, for the control of
10 Japanese foreign affairs by the militarists. Various
11 of the defendants have joined in this game, and
12 would like to dispose of their part in the manage-
13 ment of foreign affairs through the medium of the
14 Liaison Conference by saying airily, "diplomatic
15 matters were of course the responsibility of the
16 Foreign Minister." This pathetic attempt to evade
17 responsibility is exposed by every page of the record
18 of these proceedings.

19
20 121. Consider the subject-matter of the
21 Japanese-American negotiations, the diplomatic matter
22 of consequence during the time of the TOJO Cabinet.
23 Every item of the negotiations not only involves
24 military questions, but is of primary military inter-
25 est. Do these defendants mean that the Foreign

Minister could at his own will fix the terms upon
which Japanese troops would be withdrawn from China?
Do they suggest that he could have given to the United
States the undertaking that Japan would or would not
in certain circumstances of American involvement
in the European war take action under the Tripartite
Pact? They surely do not mean that the Foreign
Minister could revoke the decision of the Imperial
Conference of 2 July, taken at the insistence of the
High Command, and order withdrawn from southern
French Indo-China the troops which had been dispatched
thither in accordance with that decision. The sig-
nificance of the question of equality of commercial
opportunity in the Pacific area was its bearing on
access to military strategic resources. The "sub-
jects for study" of the Liaison Conference are dom-
inated by those of military interest; what diplomatic
questions are included are not committed to the
Foreign Ministry alone, but are "to be studied by
War, Navy and Foreign Ministries and High Command."
"There was no interference in diplomacy from
outside the Foreign Ministry"? No defendant has de-
nied that the Liaison Conference of October 1941 de-
bated long and hotly whether to continue diplomatic
626.. Exhibit 1328 (Tr. 11,923).
626

negotiations with America, at all; none has denied
but all agree, that the very, specific terms which
the Foreign Minister might forward to his ambassador
in the United States as matter for further negotia-
tions were the subject, not only of discussion, but
of the decision of the Liaison Conference. The
time-limit was put on negotiations by the Liaison
Conference, at the instance of the High Command; at
the demand of the High Command, the Liaison Confer-
ence on 1-2 November adopted the precise language of
the proposals which would be presented to the United
States, and voted that a failure of the negotiations
based on them would lead to a decision for war. The
Liaison Conference -- not the Foreign Ministry -- auth-
orized the presentation to the United States of Pro-
posal "B," when it seemed that Proposal "A" had
failed⁶²⁷ most of the diplomatic telegrams,
including all important ones, being sent to the Army
and Navy Ministries and General Staffs⁶²⁸ through the
Military and Naval Affairs Bureaus -- and seemingly
to the Lord Keeper of the Privy Seal as well ---⁶²⁹
the Foreign Ministry could scarcely claim to take even
627. Testimony of TOGO (Tr. 35,703) and YAMAMOTO
(Tr. 26,028)
628. Testimony of YAMAMOTO (Tr. 25,908)
629. Testimony of TOGO (Tr. 35,707)
630. Id., Tr. 35,820.

the leading part in diplomacy. "Collective management" of foreign affairs had come, as Mr. TOGO said, as the corollary of the collective responsibility of the Cabinet; but the evidence here has shown in a thousand instances how much of the management during the Japanese-American negotiations was that of still another, and an entirely irresponsible, body, the military High Command. Mr. TOGO gives several examples of the ignoring of the Foreign Ministry in matters closely related to foreign affairs -- the issuance of military occupation currency to be used in foreign countries, in the spring of 1941, without consultation with the Foreign Ministry; Lord Keeper KIDO's injunction to War and Navy Ministers only, upon the resignation of the KONOUE Cabinet, to review the question of the basic national policy for war or peace -- many others are known to the Tribunal from the evidence and from history.

122. The position of these defendants is hopelessly untenable. The record is far too full of the claims of these same defendants, now asserting the

631. Tr. 35,667-8

632. Testimony of OKADA, Tadahiko (Tr. 17,752); Exhibit 687-B (Tr. 35,557).

633. Tr. 35,669-70

634. See, for example, TAKEUCHI, War and Diplomacy in the Japanese Empire (1935).

undivided responsibility of the Foreign Minister for
1 diplomacy, of their intentions and actions for
2 settlement of diplomatic matters. Putting aside any
3 further consideration of military control of the
4 national policy, we will mention as exemplary of
5 such control of the actual execution of diplomatic
6 affairs only the Liaison Conference management of
7 the steps for commencement of war against the United
8 States and Britain -- which brings us back to Admiral
9 SHIMADA. This instance is the perfect example of
10 the extent to which the real management of the sub-
11 stance of foreign policy had been firmly grasped by
12 the Army and Navy, leaving to the Foreign Ministry
13 the bare forms; it is the most incredible example
14 of the efforts to shirk responsibility. In connec-
15 tion with these formalities for commencement of hos-
16 tilities the defendants pretend indifference; we can
17 find statements of defendants who participated in
18 the Liaison Conference that "I was of the opinion
19 that the problem of diplomatic procedure should
20 naturally be carried out upon the responsibility of
21 the Foreign Office"; ⁶³⁵ "it was my firm belief that
22 I could rely upon the knowledge and skill of the For-
23 eign Minister and his experts. Consequently, I never
24
25 635. Testimony of OKA (Tr. 33,401)

1 felt any concern about the procedure that was adopted
2 until after the end of the war";⁶³⁶ "I depended ex-
3 clusively upon the advice of the Foreign Minister"⁶³⁷
4 for "understanding of that last notification";
5 "once the decision that was unavoidable had been
6 reached, all these more or less technical matters
7 were left up to the Foreign Minister to do on his
8 own responsibility in such a way that all proceed-
9 ings would be in accordance with international law
10 and, therefore I did not have much interest in these
11 matters";⁶³⁸ "I was of the opinion the matter was
12 competently handled by the responsible officials."⁶³⁹
13 But who were they? What is the meaning of a Premier
14 who says that he depended exclusively upon the ad-
15 vice of his Foreign Minister in regard to a note,
16 when he had joined with all other attendants to vote
17 down the Foreign Minister's suggestion that he be al-
18 lowed to manage it in the usual and customary way?
19 636. Testimony of SHIMADA (Tr. 34,673)
20 637. Testimony of TOJO (Tr. 36,532)
21 638. Testimony of SUZUKI (Tr. 33,315)
22 639. Testimony of KAYA (Tr. 30,657)
23 640. The discussion of these matters in the TOJO
24 affidavit (Tr. 36,388-91), is obviously statement of
25 bare conclusions, and will not be discussed here.
Thus, the generality that the note to the United States "was to be in the nature of a notification of war based upon international law, and Japan was to reserve freedom of action after handing the notification to the United States" (Tr. 36,390) is patently General TOJO's opinion of the effect of what was done when,

If it was their firm belief that they could rely upon
the knowledge and skill of the Foreign Minister, why
not rely on him, instead of overruling his suggestions
in what should have been his own field? If they
were of the opinion that the problem of diplomatic
procedure should naturally be carried out upon the
responsibility of the Foreign Ministry, why did they
tell the Foreign Minister what kind of communication
he might make, tell him when to deliver it, and
participate in the drafting and revising of the
very wording of it? What do these people mean? It
is difficult to be temperate in the presence of such
as this, when we find one of them in his summation
saying that

"No one doubts or has any evidence been
offered to the contrary that the Foreign Minister was
chargeable with diplomatic matters. Certainly the
final notification to the United States fell within
this category of duties. The government left the
physical fact of the note's construction and contents
to the Foreign Minister with the Navy General Staff
interested mainly in the time element of delivery.

640. (Cont'd) as he has just stated, "Foreign
Minister TOGO presented the draft of the notification
for discussion at the Liaison Conference of 4 December
based on the above decision. This proposal was ap-
proved unanimously" (Tr. 36,389).

1 It was carried out in the admission of TOGO himself." 641
2 This, from a man who admitted that his subordinate and 642
3 his subordinates participated in preparing the note!
4 With what contemptible pusillanimity, now they see
5 what have been the results of their cunning in not
6 allowing the Foreign Minister to do his duty as he
7 knew how to do it, do these militarists squirm and
8 writhe, trying to free themselves of the responsibil-
9 ities which they usurped!

10 123. These defendants were no indifferent,
11 no uninterested bystanders when the procedure for
12 commencing Japan's war against America was under dis-
13 cussion. They could not be, because the Liaison
14 Conference which they controlled had made of that
15 question of procedure, not one of diplomacy, but one
16 of operations, of strategy. They had made it so, by
17 their support of, their failure to reject, the Navy's
18 insistence that it must be such. They had yielded to
19 the Navy's demand that it must have the right to make
20 a surprise attack against the United States; with
21 this they had conceded the Navy's right to determine
22 the form, the contents and the time of delivery of
23 Japan's final note to the United States. No one of
24

25 641. SHIMADA Summation, §59-a (Tr. 45,427-28)

642. Testimony of OKA (Tr. 33,500).

them has claimed or can claim that he fought in the
1 Liaison Conference for starting the war in the usual
2 way -- no one but Foreign Minister TOGO, whom no one
3 of them professes to have supported in his fight for
4 the honorable and the decent; they have instead at-
5 tempted to flee the ground and escape responsibility
6 for the controversy by pretending that they never
7 heard of it. They were there; and it happened; and
8 they did not support him, or his contention would have
9 prevailed. It was they, equally with the dead ITO,
10 who limited what the foreign minister might do to
11 the giving of notice to the United States that ne-
12 gotiations were broken off; it was they also who did
13 not permit him at his desire to serve the declaration
14 of war which he urged be in usual and customary form;
15 it was they who acquiesced while the Naval High Com-
16 mand fixed the time for service of the notification
17 to suit its operational needs, and those alone. These
18 are the "more or less technical matters" which one
19 defendant would leave to the Foreign Minister, the
20 "problems of diplomatic procedure" which another is
21 of opinion are the responsibility of the Foreign
22 Ministry. Still another "was of the opinion the
23 matter was competently handled by the responsible
24 officials." Yes, the responsible officials; but who

them has claimed or can claim that he fought in the
1 Liaison Conference for starting the war in the usual
2 way -- no one but Foreign minister TOGO, whom no one
3 of them professes to have supported in his fight for
4 the honorable and the decent; they have instead at-
5 tempted to flee the ground and escape responsibility
6 for the controversy by pretending that they never
7 heard of it. They were there; and it happened; and
8 they did not support him, or his contention would have
9 prevailed. It was they, equally with the dead ITO,
10 who limited what the foreign minister might do to
11 the giving of notice to the United States that ne-
12 gotiations were broken off; it was they also who did
13 not permit him at his desire to serve the declaration
14 of war which he urged be in usual and customary form;
15 it was they who acquiesced while the Naval High Com-
16 mand fixed the time for service of the notification
17 to suit its operational needs, and those alone. These
18 are the "more or less technical matters" which one
19 defendant would leave to the Foreign Minister, the
20 "problems of diplomatic procedure" which another is
21 of opinion are the responsibility of the Foreign
22 Ministry. Still another "was of the opinion the
23 matter was competently handled by the responsible
24 officials." Yes, the responsible officials; but who

1 are they? He was present when the matter was "handled";
2 he voted; he has no doubt who are responsible.

3 How can a foreign minister take responsibility
4 when he is not allowed to exercise it? Can he be held
5 responsible for the diplomatic documents which he delivers,
6 when they are drawn by order and with the participation of
7 militarists who have the power to make them their business?
8 When he doesn't know and can by no means in his power
9 learn the hour set for war, is he responsible for seeing
10 to it that a declaration be delivered a given time in
11 advance of that hour? These are the questions to which
12 the defendants must give a satisfactory answer before they
13 can be relieved of responsibility.
14

15 124. We have discussed the matters relating
16 to the commencement of the war from the point of view of
17 responsibility. I should by no means, however, wish it
18 to be thought from the extended treatment which I have
19 given to them that there is any attempt to shift from the
20 Foreign Minister a responsibility which is properly his
21 for conduct which is admittedly improper. Whatever share
22 of the responsibility is his, of course he accepts,
23 without, however, accepting that for the actions of
24 others; nor is the course which was
25

forced upon him by any means easily to be demonstrated wrong. The question of the legal effect of the steps actually taken has been fully discussed in another place, where we have submitted that the note served upon the United States did, even as limited in its contents, amount in the circumstances to a declaration of war; that the time provided for its delivery would, had not the double mishaps of the late delivery and early attack intervened, have been sufficient compliance with the requirements of international law;⁶⁴³ and that those mishaps were in no wise the fault or responsibility of the Foreign Minister.⁶⁴⁴

The situation is not one in which the Foreign Minister, at first contending for what was proper, was overruled and in the end weakly acquiesced in that which he regarded as improper. He has testified that his feeling was that "after a hard struggle I had succeeded in stopping the Navy's demand, but had stopped it at the ultimate limit of international law."⁶⁴⁵ It is submitted that he was correct in his belief. As we have already argued, any notification of commencement of war could properly be dispensed

643. Summation for the defense, Section "E," "So Questions of International Law," §§16-17 (Tr. 42,441-51)
644. The Japanese-American Negotiations, §§75-76 (Tr. 43,710-18)
645. Tr. 35,716

1 with if his belief that the war was one of self-
2 defense was correct; he had recognized this from the
3 outset, but had "thought it better in every way"
4 that the usual course should be followed, "even in
5 a case where it might be superfluous, rather than
6 that there should be any question of Japan's good
7 faith observance of international morality."⁶⁴⁶ Find-
8 ing himself, however, the only one interested in
9 morality or in Japan's good name, he had finally
10 accepted under compulsion a course which he consid-
11 ered to be technically correct, if undesirable; but
12 the fact that he had disapproved of it originally
13 does not brand it as legally wrong or him as criminal
14 for swallowing his original scruples.

15 Aside from the question of the correctness
16 of the course planned there is that of responsibility
17 for its miscarriage, which resulted in delivery of
18 the final note to the United States after hostilities
19 had commenced. This also has been fully treated in
20 our general summation,⁶⁴⁷ to which it will suffice to
21 make reference. It has there been submitted that the
22 delay which occurred in Washington was in no way the
23 result of any fault of the Foreign Ministry, but of

24
25 646. Tr. 35,718-19
647. Loc. cit. supra n644

the grossest negligence of the Embassy exclusively,
1 and that no exception can reasonably be taken to the
2 Foreign Ministry's arrangements for the delivery. So
3 far as concerns the Foreign Minister's responsibility
4 in the matter it might be pointed out that the making
5 of arrangements for delivery -- the ordering that no
6 typists should be used, for example, in preparation
7 of the final copy, a point so much relied upon by
8 the prosecution -- was the responsibility of the
9 officials of the Foreign Ministry in charge of adminis-
10 trative detail, routine business. Such a contention
11 as that seemingly made by the prosecution, that the
12 Foreign Minister is personally responsible for such
13 an order as that no typists be used in drafting the
14 note (a perfectly normal, natural and proper ar-
15 rangement, by the way) is opposed to common sense and
16 ignores the realities of governmental life. If the
17 prosecution can seriously believe that the Foreign
18 Minister of a nation about to go to war is occupied
19 with nothing weightier than the assignment of typist
20 personnel in an embassy abroad, it is submitted that
21 the Tribunal cannot believe it.
22

23
24 125. The question of the message of Presi-
25 dent Roosevelt to the Emperor, sent on 6 December in
Washington, delayed in delivery to Ambassador Grew

and finally presented to the Throne in the small
1 hours of the morning of 8 December in Tokyo, having
2 been fully discussed in another summation,⁶⁴⁸ it is
3 necessary to say only a few words here concerning
4 it. In summing up against Mr. TOGO the prosecution
5 abandon the charge -- which is supported by no evi-
6 dence -- that he either had anything to do with or
7 had knowledge of the delay. The position now is
8 that "it makes no difference" whether he knew of the
9 delay, because he had some ten days earlier rejected
10 the proposal of the Ambassadors in Washington "to
11 the same effect"; "the appeal by the President would
12 not have been acceded to or even acted upon by him
13 even if it had not been received too late."⁶⁴⁹ The
14 argument already referred to has dealt with the
15 question whether the "appeal by the President" --
16 for such, rather than any proposal for settlement,
17 it was -- offered any substantial promise or hope
18 of leading to an agreement; reference to that argu-
19 ment, or mere reading of the message and the Ambassa-
20 dors' proposal, will dispose of the prosecution's
21 attempt to confound two entirely unrelated and quite
22 different matters. And in any event, the ultimatum

25 648. The Japanese-American Negotiations, §§73-74
(Tr. 43,704-10)

649. Summation, SWW-37 (Tr. 41,936)

of Mr. Hull which had led Mr. TOGO to the point of
1 resigning himself to war was still not withdrawn;
2 the President's message did not suggest amendment
3 of its terms; there was nothing in the fact of a
4 message from the President, expressing the earnest
5 desire for maintenance of peace (which was Mr.
6 TOGO's desire also), to affect his opinion of the
7 necessity of Japan's acting in self-defense. He had
8 worked arduously for peace, and no doubt would still
9 have done so; but something practical would be re-
10 quired to alter the existing situation, no mere
11 pious hope could be of use.

13

14

15

16

17

18

19

20

21

22

23

24

25

S
p
r
a
t
t

126. One or two minor points in connection
1 with this message. When Mr. Grew finally got it, came
2 bringing a copy to ask the Foreign Minister to arrange
3 an audience for its presentation to the Throne,
4 MR. TOGO, the prosecution say, "after some hesitation"
5 agreed to present it to the Emperor. ^{650.} The evidence
6 is otherwise; the prosecution's own exhibit shows
7 that Foreign Minister TOGO, rather than "hesitating,"
8 told Ambassador Grew that the arranging of an audience
9 with the Emperor at a time past midnight was difficult,
10 and that whether he would be received might depend upon
11 the contents of the message which he had to deliver.
12 Being given a copy of it, the Foreign Minister imme-
13 diately moved to take in regard to it what action it
14 might prove to justify. ^{651.} It is quite true that
15 the Foreign Minister, at the interview with Mr. Grew,
16 "made no mention of" the fact that "the Japanese
17 attack was bound to take place within a few hours"; ^{652.}
18 neither has this any bearing on the efficacy of the
19 presidential message, nor is there any conceivable
20 reason that he should have mentioned it. This naive
21 charge is merely the prosecution's opinion that it was
22 650. Summation, SWW-37 (T. 41936).
23 651. Exhibit 3647 (T. at 35924-25).
24 652. Summation SWW-37 (T. 41936).

1 the duty of the Foreign Minister, having arranged for
2 declaration of war to be served within a proper time
3 before the commencement of hostilities, to tell the
4 American Ambassador of the declaration because the
5 latter happened to call on him.

6 The Emperor did approve the reply to the
7 President, which, as it was his duty to do, Foreign
8 Minister TOGO had drawn up. The prosecution seem to
9 wish to complain of this; perhaps they would begin to
10 grasp the realities of affairs of state if they once
11 sent a Foreign Minister to his Emperor with a presi-
12 dential message but without a draft of a proposed
13 reply, and saw their Foreign Minister sent back to
14 formulate and prepare for submission to the Throne his
15 advice of what action to take. Whether the Emperor's
16 reply so prepared is accurately characterized by the
17 prosecution as evasive⁶⁵³ can confidently be left to
18 the judgment of anyone who reads the document with
19 the history of the Japanese-American negotiations in
20 mind.

21 It is believed that the conversations of
22 Foreign Minister TOGO with the British and American
23 Ambassadors, on the morning of 8 December, are of no
24 653. Ibid.

1 real significance to the case. The prosecution point
2 out -- which is quite true -- that although those
3 conversations took place after the outbreak of
4 hostilities, no mention of that fact was made by
5 Mr. TOGO; but they fail to mention any significance
6 of this. It is not apparent what difference in the
7 situation would have been created by an announcement
8 by Mr. TOGO of the state of war then in existence,
9 unless to spare the ambassadors that injury to their
10 self-esteem which the prosecution seem to feel for
11 them. It is so plain that when the war had once
12 started Mr. TOGO could have had no ulterior motive
13 in withholding information of the existence of the
14 state of war from the ambassadors that, it is sub-
15 mitted, his own explanation of why he did so can only
16 be accepted, however strange psychologically it may
17 appear from the western point of view: that, dis-
18 liking to mention to old friends the war which had
19 come between their countries, and assuming -- reasonably
20 enough -- that they had heard the news on the radio
21 broadcast which he knew was to have been made, he
22 confined himself to the farewell sentiments that it
23 was a matter of regret that regulations had come to
24 such a state, and that they must part in such

654.
circumstances.

1 127. In connection with this matter of
2 President Roosevelt's telegram we have again to
3 notice some strange antics of Marquis KIDO. He has
4 seen fit for some reason to deny that Foreign Minister
5 TOGO, in the talk which they two had in the Imperial
6 Palace just before 3 A. M. on the morning of the 8th,
7 informed him of the contents of the President's mes-
8 sage. This is another of those matters wholly imma-
9 terial to the case of Mr. TOGO -- it was no part of
10 his duty to insist that he be permitted to keep the
11 Lord Keeper of the Privy Seal informed, even against
12 his will, of such matters as he thought that func-
13 tionary ought to concern himself with; and whether
14 he did or did not inform Marquis KIDO of the contents
15 of the President's telegram is not even suggested as
16 affecting any liability of his before this Tribunal.
17 But it of course affects his credibility, if Marquis
18 KIDO's testimony is at all likely to be believed.

19 It is submitted that his testimony cannot be
20 believed, being incredibly at variance with all the
21 probabilities and out of keeping with the logic of
22 the facts. Here is the story. Mr. TOGO, he had
23 testified, having heard during the day on the 7th
24

654. T. 35729-30, 36140-41.

1 that the President's telegram might be expected to ar-
2 rive, had kept in touch with the Ministry of the Im-
3 perial Household concerning it, and when he finally
4 received it from Ambassador Grew after midnight he
5 called Lord Keeper KIDO on the telephone and told
6 him that he had the message. Thereafter at Marquis
7 KIDO's advice he consulted with the Premier concern-
8 ing the presidential message, then went to the Palace
9 for an audience, arriving at about 2:40, there met
10 the Lord Keeper and had a three- or four-minute talk
11 with him, telling him the contents of the message,
12 655. and had his audience. After the audience he
13 returned to the waiting-room, did not see Marquis
14 KIDO, and asked the chamberlain "Where is Marquis
15 KIDO?" Receiving the answer that the Lord Keeper
16 seemed not to be in his room, Mr. TOGO left the
17 656. Palace.

18 Marquis KIDO's testimony is in agreement up
19 to a point. He admits the telephone conversation with
20 Mr. TOGO after midnight, and says that "I was notified
21 that TOGO had proceeded to the Palace, so I went there
22 at 2:40 A. M. I only spoke with Foreign Minister TOGO
23 for a few minutes. I did not see the telegram nor did
24 655. T. 35727-29.
25 656. T. 35906.

1 he tell me of its contents and I went home, arriving
2 there at 3:30 A. M.^{657.} He testified also that he
3 stayed in his office for some time, and finally being
4 advised that the Foreign Minister had finished his
5 audience and left, he too went home.^{658.}

6 Marquis KIDO apparently relies on the fact
7 that his conversation with Mr. TOGO was very brief
8 as proof that he could not have learned the content
9 then -- relies on it so heavily that in his testimony
10 he shortened the length of the conversation, finally
11 from the "few minutes" which he first had it to "a
12 minute or two."^{659.} At any rate, the difference from
13 Mr. TOGO's "three or four" minutes is still not very
14 great. A simple test will dispose of any evidentiary
15 value of this testimony: read the President's message,
16 understand it, and time yourself while you state the
17 gist of its contents. It will be found that a minute
18 will suffice to the recitation of that substance of
19 it which it would be important to mention at that stage
20 of the negotiations which had preceded it. But, says
21 the Marquis in his summation, the Foreign Minister
22 spent fifteen minutes with the Emperor discussing the
23

24 657. T. 31048.

25 658. T. 31610.

659. T. 31607.

matter, which shows that it would have been impossible
1 to discuss it with the Lord Keeper in three or four
2 minutes. 660. This is a self-evident fallacy. Mr.
3 TOGO's testimony shows that he summarized the tele-
4 gram for Marquis KIDO, while he read it in full to
5 the Emperor; 661. a formal reading in full does take
6 more than three or four minutes. The Emperor's reply
7 had to be discussed with him, and appropriate explana-
8 tions of the circumstances would naturally be given.
9 There is no inconsistency whatsoever in the evidence
10 on this point. It is to be feared that Marquis KIDO's
11 sense of time, by the way, is not very exact. He has
12 stated at all times -- diary, affidavit, cross-examina-
13 662. tion -- that he arrived at the Palace at 2:40. In
14 diary and affidavit he says that he arrived home at
15 663. about 3:30, and it required, he says, some ten
16 664. minutes for the drive between the two points. This
17 would leave him at the Palace for approximately forty
18 minutes. In cross-examination, however, he stated that
19 665. he remained there "about ten or fifteen minutes."
20 This admission, if true -- it is a little hard to know
21 which of the Marquis' statements represent his best
22
23 660. KIDO Summation, §307 (T.).
24 661. T. 35896.
25 662. Ex. 1239 (T. 16192); T. 31048.
663. Ex. 1239 (T. 16192); T. 31049.
664. T. 31606.
665. T. 31607.

1 recollection -- disposes of his claim that he waited
2 for Mr. TOGO until he learned that the audience had
3 ended; for Mr. TOGO has said that he finished his
4 audience and left the Palace at 3:15; the Lord Keeper
5 would have left at 2:50 or 2:55, according to this
6 testimony. But he contradicts himself again; for
7 he agrees with Mr. TOGO that their conversation ended
8 when the chamberlain on duty summoned Mr. TOGO to his
9 audience, which would have been very shortly before
10 3 o'clock.
11

12 Counsel for Marquis KIDO seems to imply that
13 the arrival of the chamberlain interrupted the
14 conversation, as if to suggest that Marquis KIDO was
15 prevented thereby from learning of the President's
16 message. If it had been true that there was an
17 interruption -- Mr. TOGO however said that "generally
18 our conversation had been concluded" and that the
19 Lord Keeper wished to learn more, he could have waited.
20 He would have said, "I'll talk with you more after
21 your audience; come to my office." And he would have
22 waited, instead of going home after ten or fifteen
23 minutes at the Palace.

24 128. What are the probabilities? Marquis
25 KIDO, already knowing of the fact of the arrival of
666. Ibid; 667. T. 35829; 668. Ibid.

the President's message (and knowing, he being an
intelligent man, what significance it had), heard that
the Foreign Minister had gone to the Palace, and
thereupon himself proceeded thither. For what purpose?
Why did he go? Because the Foreign Minister had gone,
obviously; to talk with the Foreign Minister. Talk
they did. Marquis KIDO doesn't say that he asked
Mt. TOGO what the President's message said, and that
the Foreign Minister refused to tell him; Marquis
KIDO doesn't say what other matter, of such trans-
cendent importance as to overshadow this, they may
have discussed; Marquis KIDO didn't confide that night
to his faithful diary that "I talked with Foreign
Minister TOGO, but did not hear the contents of the
President's message." Does Marquis KIDO wish to pose
as the sort of official who at such a time, having
gone specially to the Palace because the Foreign
Minister was there with a message from the President of
the United States for the Emperor, carefully confined
the conversation to the state of the weather? What,
tell us, Marquis KIDO, did you discuss with Foreign
Minister TOGO for three or four, or a few or one or
two, minutes? Is it conceivable that the Foreign
Minister in those circumstances could have kept his
conversation off the subject which had brought him

there for audience at such an extraordinary hour?

1 Marquis KIDO seemingly considers now that
2 President Roosevelt's telegram has a certain impor-
3 tance -- enough at least for him to go to some lengths
4 to explain his connection, or lack of connection, with
5 it. If the Foreign Minister didn't tell him of its
6 contents, why did he not ask? If he did ask, and as
7 he testified was about to be told when interrupted by
8 669. the chamberlain,^{669.} why did he not wait until after
9 the audience? And if he waited, but somehow missed
10 the Foreign Minister why did he not follow him to his
11 residence, or telephone to him ("it did not occur to
12 me"⁶⁷⁰) to find out about it? His entire failure to
13 make an effort to inform himself in the matter has only
14 one explanation: he was satisfied. He had learned
15 what there was to know about it.
16

17 129. One or two other points in the extended
18 summation of Marquis KIDO in reference to this matter
19 deserve notice. One is the attempt to distort the
20 meaning of Mr. TOGO's language in cross-examination
21 to make him say the absurdity that Marquis KIDO gave
22 his opinion of the Roosevelt message before hearing what
23 671. the message was about. While it might be pointed
24

25 669. T . 31605.

670. T. 31611.

671. KIDO's Summation, §§303-6 (T.).

there for audience at such an extraordinary hour?

1 Marquis KIDO seemingly considers now that
2 President Roosevelt's telegram has a certain impor-
3 tance -- enough at least for him to go to some lengths
4 to explain his connection, or lack of connection, with
5 it. If the Foreign Minister didn't tell him of its
6 contents, why did he not ask? If he did ask, and as
7 he testified was about to be told when interrupted by
8 669. the chamberlain, why did he not wait until after
9 the audience? And if he waited, but somehow missed
10 the Foreign Minister why did he not follow him to his
11 residence, or telephone to him ("it did not occur to
12 me") to find out about it? His entire failure to
13 make an effort to inform himself in the matter has only
14 one explanation: he was satisfied. He had learned
15 what there was to know about it.
16

17 129. One or two other points in the extended
18 summation of Marquis KIDO in reference to this matter
19 deserve notice. One is the attempt to distort the
20 meaning of Mr. TOGO's language in cross-examination
21 to make him say the absurdity that Marquis KIDO gave
22 his opinion of the Roosevelt message before hearing what
23 671. the message was about. While it might be pointed
24

25 669. T . 31605.

670. T. 31611.

671. KIDO's Summation, §§303-6 (T.).

1 out that the Marquis' own testimony leaves it at least
2 doubtful whether he did not already know "the contents"
3 of the President's message before talking with Mr. TOGO.
4 it is no part of my business to speculate how he would
5 have known, still he did say that "the matter was of
6 a nature that it should be handled by the Foreign
7 Minister" ⁶⁷² -- that can be passed by. What is clear
8 is that Mr. TOGO at all times meant and in his testimony
9 said, that the sequence of events was that he told
10 Marquis KIDO that he had the President's message, that
11 it said so-and-so; that Marquis KIDO said, "I see that
12 it won't do," then asked what the Premier's opinion
13 was, to which Mr. TOGO said "The same as yours." ^{673.}
14 There is no difficulty about it, nothing that playing on
15 words can obscure.

16 Marquis KIDO relies much on the testimony of
17 Marquis MATSUDAIRA, long his confidential secretary,
18 to prove that he had not learned from Mr. TOGO the
19 contents of the telegram, Marquis MATSUDAIRE said
20 first, in answer to questioning by Marquis KIDO's
21 counsel, that he had talked with Marquis KIDO toward
22 noon on 8 December about the telegram, and that

23 672. T. 31608.
24 673. T. 35899-900.
25

"Marquis KIDO said that at that time he was not
familiar with the details." This was obviously
not very satisfactory; and in response to some mild
leading by counsel he was induced to say further that
"I don't think at that time that I heard anything of
the contents from him." The witness however was not
yet quite content with the accuracy of his testimony,
and then added: "He said he was at that time unfamiliar
with the details of the telegram -- of the contents of
the telegram." Allowing for the taking of the
fresh start by the court interpreters in translating
this sentence, the matter rests at "He said he was at
that time unfamiliar with the details of the contents
of the telegram." Which is not very strong corrobor-
ation for Marquis KIDO; for the reading of the telegram
already suggested shows that there are no "details"
which would be recited in summarizing its contents.
The witness' answer plainly repeats the words of a man
who had been told the contents of a document, but has
not seen it himself to know the exact language of
the "details"; and is thus confirmation of Mr. TOGO's
account of the matter.

130. It is usually helpful, in these ques-
tions of credibility, to look to see who has the
674. T. 35600. 675. Ibid.

1 motive for not stating the truth. Mr. TOGO's is
2 undiscoverable; he has readily accepted full respon-
3 sibility for all that he did in connection with the
4 President's message. Marquis KIDO's is readily found.
5 He has somehow got the idea that he should profess to
6 feel that he should have advised the Emperor in the
7 matter -- perhaps that he should have advised that the
8 President's message offered a chance to avert war. It
9 didn't, of course; but the Lord Keeper of the Privy
10 Seal feels that he should have been keeper of the
11 Imperial conscience in that matter. At that time, he
12 admits, he considered that "the matter was of a nature
13 that it should be handled by the Foreign Minister."
14 But now he feels that he must deny that he was ade-
15 quately informed. Every circumstance is against him.
16 For if he had not been informed, he would have made it
17 his business to become so. He would not have chatted
18 with the Foreign Minister for a few minutes about the
19 weather, seen him off to his audience, and gone home --
20 or even waited for his emergence and, having missed
21 him, again gone home -- without further efforts, without
22 indeed pursuing the Foreign Minister until he caught
23 him unless he was perfectly satisfied with the position.
24 He could not have chatted with the Foreign Minister
25 even about the message itself, and left the matter

there, unless he was content.

1 The theme of Marquis KIDO's summation is
2 that Foreign Minister TOGO, receiving President Roose-
3 velt's telegram, had audience of His Majesty, the
4 Emperor, communicated to him the telegram, and ruth-
5 lessly disregarding if not maliciously trampling on
6 the dignity and prerogatives of the Lord Keeper of
7 His Majesty's Privy Seal, advised the Emperor of the
8 action which it would be desirable to take. If the
9 Lord Keeper wanted to exercise his prerogative of
10 advising the Emperor before the Foreign Minister got
11 in his advice, why did he not do so? The time for
12 audience was not set by the Foreign Minister, but by
13 the Lord Keeper's office. Marquis KIDO had only to
14 go to the Foreign Minister's residence and wait until
15 he could get a copy of the translated telegram at the
16 same time that the Foreign Minister got it -- or read
17 the Foreign Minister's copy -- return to the Palace
18 and be about advising. No one would have stopped him,
19 none would have refused him. There is no evidence that
20 anyone ever objected to his meddling in affairs of
21 state or politics. He did not go to the Foreign
22 Minister's residence; he did not ask the Foreign
23 Minister, when talking with him by telephone, "Send me
24 a copy of the translation as soon as it's ready, so

47,921

that I can advise the Emperor before your arrival." He did nothing. The only explanation of his conduct consistent with the facts is that there was discussion of the President's message at the Palace; that Marquis KIDO did, as Mr. TOGO testified that he did, give his opinion that it would do no good; that he did hear that the Premier's opinion was the same; and that satisfied that with the reporting of that opinion to the Throne, there was no occasion for him to make the same report and give the same advice, he therefore went off to bed in perfect contentment. He cuts a sorry figure when he would deny this evidence of circumstances.

131. My survey of the events preliminary to and accompanying the commencement of the Pacific war has been necessarily rapid. Limitation of time prevent me from undertaking discussion of many minor points of more or less interest, which because they have been reiterated by the prosecution I should prefer not to pass without remark. No doubt, however, the case will be decided on the large questions, and I have no hesitancy in assuming that decision of the small ones will be easy once the determination has been made in such basic matters as the defendant's intent and the legal questions involved. As one example of this sort

of question, I mention the prosecution's charge that
1 Foreign Minister TOGO continued the negotiations with
2 the United States after war had been decided on with
3 the intent of providing a screen for war preparations.^{676.}
4 My feeling is that it is not a substantial issue, on the
5 evidence, for in two ways it may be considered to merge
6 into the larger question. Mr. TOGO's explanation of
7 the matter is that there might yet have been some
8 hope, however faint, of agreement; he had the commit-
9 ment that all war preparations would be canceled in
10 such an event;⁶⁷⁷ and that if the United States could
11 be convinced that Japan would not yield to the Hull
12 Note she might reconsider,⁶⁷⁸ might in accordance with the
13 suggestion offered to her turn back and give con-
14 sideration to Proposal "B."^{679.} This is a statement
15 of the same viewpoint as that of American Secretary of
16 State Hull, that it is the duty of a diplomat to
17 "clutch at straws" even in face of a situation
18 "virtually hopeless"⁶⁸⁰ -- even, in his case also, after
19 he had confided Japanese-American relations to the
20 hands of his army and navy.

- 22 676. Summation, SW-31 (T. 41922-25).
23 677. Testimony of TOGO (T. 35697) and TOJO (T. 36408-744).
24 678. The Japanese-American Negotiations, §71 (T. 43699-
25 679. Testimony of TOGO (T. 35712-14).^{701).}
680. Exhibit 2840 (T. at 26362).

D
u
d
a

It is submitted that if Mr. TOGO be found to have been sincere in his desire and efforts to conclude a peaceful settlement before the decision of war, there is nothing in the fact of his continuing thereafter to hope and try in desperation to avert war to convict him of having altered his intention. Looking at the matter, moreover, from the legal point of view, solution of the larger question may well dispose of this. Mr. TOGO, it is clear, was expecting that in due course and before the opening of hostilities there would be served upon the United States a notice which was legally tantamount to a declaration of war. The contention that he should in good faith have broken off negotiations or otherwise taken some action vis-a-vis the United States and the negotiations is but to propose placing upon him a duty of giving the United States a prior notification of several days, instead of the hours or minutes which the law makes sufficient.

For these same reasons I shall omit mention of numerous related questions, questions which the prosecution have discussed as bearing on Mr. TOGO's intention. Such is the question of the relation to his state of mind of the fact of existence in his ministry of various drafts of proposed courses of action during or after negotiations with the United States, of procedures for

opening of war, and the like. The much-discussed draft
1 by Mr. YAMAMOTO, for example -- the "YAMAMOTO Private
681 Draft," as it is entitled -- is a document which may
2 or may not support any part of the inferences which the
3 prosecution would draw from it; but it is in any event
4 shown to have been only an example of a class of document
5 682 in which Japanese government offices abounded, it is
6 not shown ever to have come to the notice of Mr. TOGO,
7 683 and it is submitted to have no bearing on the real issue,
8 and it is submitted to have no bearing on the real issue,
9 that of Mr. TOGO's intention.

10
11 As one further example, the question of the
12 no-separate-peace treaty among Japan, Germany and Italy
13 has, in my submission, no significance -- once war has
14 been decided such agreements are only a natural step
15 by way of preparation for war and, as the President once
16 684 remarked, not "in themselves criminal" -- and I there-
17 fore omit discussion of how it was negotiated by the
18 Foreign Minister at the direction of the Liaison Con-
19 685 ference.

20
21 132. It can scarcely be argued that the com-
22 mencement of war on 8 December 1941 represented the
23 realization of the desires of Foreign Minister TOGO,

24 681. Ex. 2975 (Tr. 26,297).

682. Testimony of TOGO (Tr. 35,733-34).

683. Testimony of YAMAMOTO (Tr. 26,333).

684. Tr. 17,468.

685. See the testimony of TOGO (Tr. 35,664-65,

35,734-36).

the one man in Japan shown to have resisted its coming
1 vigorously and consistently, or the fruition of any plans
2 of his. Rather we are compelled by the evidence to the
3 conclusion that to him it was the ruin of all that he had
4 hoped and worked for throughout his career. On this,
5 which is submitted to be the one issue remaining in his
6 case, the main point can never be lost sight of, cannot
7 be obscured by any details which may be ambiguous or
8 doubtful: he had never planned or conspired to wage wars,
9 of aggression or otherwise, against any nation whatsoever;
he had fought aggression and the use of force throughout
11 his life. It is incredible that he should have reversed
12 his course in a few days of the autumn of 1941.

14 WAR-TIME DIPLOMACY AND "GREATER EAST ASIA"

15 RELATIONS.

16 133. I have no intention of speaking at
length of the events of war-time while Mr. TOGO served
18 as Foreign Minister either still in the TOJO Cabinet
19 until 1 September 1942, or in the SUZUKI Cabinet from
20 April to August 1945. If I am not mistaken, the events
21 of war-time have little bearing on the questions of
22 legal responsibility which it is the duty of this Tri-
23 unal to decide. If there be a liability resting upon
24 Mr. TOGO as Foreign Minister for bringing the war about,
it is one which will not be

increased by his having remained in office and contributed
1 to the extent of his discharge of the responsibilities
2 as Foreign Minister to the conduct of that war. If he
3 has no liability for causing it, none, it is supposed,
4 is to be placed upon him (in accordance with the prosecu-
5 tion's doctrine of execution of a previously-adopted
6 policy) for what he did in support of it, unless he be
7 charged with entirely new and unrelated offenses, which
8 with one exception he is not. My view finds support in
9 the fact that the prosecution have asserted no particular
10 liability of Mr. TOGO for the events of war-time with
11 that exception of the prisoner-of-war question, dis-
12 posing of the entire period of his remaining service in
13 the TOJO Cabinet very casually.

15 It is therefore my intention to refer to such
16 matters only for their bearing upon the case against
17 Mr. TOGO as a whole, for their evidentiary value of his
18 intention in participating in the commencement of the
19 war. The matter being viewed in this aspect, it may be
20 as well to mention first -- though I am postponing dis-
21 cussion of it until later -- Mr. TOGO's attitude toward
22 ending the war. One of the considerations which had
23 decided him to stay on in office after receipt of the
24 Hull Note, when it had become apparent that there was
25 almost no chance that his further efforts could avert

war, had been that by remaining as Foreign Minister even
1 if there was war he might be able to have the opportunity
2 to work for bringing it to an early end. The evidence
3 shows that he did commence that work at once, and con-
4 tinued it as he had opportunity, when he was in office,
5 until finally he was able to see the end brought about
6 through his efforts in 1945. This subject, however, we
7 shall leave for the time being, to return later.
8

134. Diplomacy had in war-time naturally a
9 much-restricted scope, and there is very little in such
10 foreign affairs as Mr. TOGO had connection with which
11 need detain us; only his attitude toward China perhaps
12 is worth discussion. As Foreign Minister in the TOJO
13 Cabinet Mr. TOGO had for the first time in his career
14 direct responsibility for affairs of China; but by that
15 time it was too late for a foreign minister to have
16 much influence on the China policy. That Mr. TOGO had
17 many years earlier formulated his policy for Japanese-
18 Chinese relations as being one of mutuality, cordial
19 relations and fairness we have seen from the excerpts,
20 already quoted in other connections, from his report
21 of 1933 to the Foreign Minister. Japan had done little
22 to further such a policy in the two decades intervening;
23 686. Testimony of TOGO (Tr. 35,708-10).
24 687. Supra, §13.

the Manchuria and China Incidents had so changed the
1 situation that achievement of anything in that direction
2 might be expected to offer great difficulties, although
3 as Mr. TOGO said "it was more clear than ever in 1941
4 that the China Incident must be settled, and I hoped
5 when I became Foreign Minister that I should be able to
6 achieve it."⁶⁸⁸ The success or failure of that venture
7 in 1941 was inextricably bound up with the Japanese-
8 American negotiations, and with their failure the settle-
9 ment of the China Incident had to be put to one side.
10

China affairs had for many years been regarded
11 as a province in which the military services had special
12 interests and privileges, and those services had exercised
13 a growing influence over such affairs for many years.⁶⁸⁹
14 After the outbreak of the China Affair the process of
15 military seizure of control of Chinese relations had
16 been accelerated, and a new body, the China Affairs
17 Board, had been created especially to manage all poli-
18 tical, economic, cultural and other relations of Japan
19 with China. The purpose of creation of the China Affairs
20 Board had been frankly that of removing from the Foreign
21 Ministry, which was regarded by the militarists as "weak"
22 toward China, the normal functions of a foreign office
23

24 688. Tr. 35,747.
25 689. See TAKOUCHI, op. cit. supra n634, at 467.

so far as concerned China matters. The board being under
1 military control and domination, the relation of the
2 Foreign Ministry to China Affairs was all but severed --
3 the Foreign Minister was (with the War, Navy and Finance
4 Ministers) an ex officio vice-president of the board,
5 but naturally had little influence in the body which
6 had been created specifically to destroy his authority
7 690 vis-a-vis China. In these circumstances there was
8 little that Foreign Minister TOGO could do toward the
9 settlement of the China Affair, which still in war-
10 time he regarded as essential. The question of the
11 fundamental policy for direction of the war came up
12 before the Liaison Conference in March 1942, and
13 Mr. TOGO took that occasion to point out that prompt
14 solution of the China Affair was a matter of primary
15 and vital importance, and to urge that a re-examination
16 from all points of view of Japan's basic policy toward
17 China be undertaken. This proposal was agreed to by
18 the Liaison Conference, but action was subsequently
19 blocked by the High Command, who discovered that carry-
20 ing out the re-examination of policy would entail many
21 difficulties. 691 Knowing what Mr. TOGO's attitude toward
22 Japanese-Chinese relations had always been, we can
23 690. Testimony of TOGO (Tr. 35,747-48).
24 691. Testimony of TOGO (Tr. 35,750-51).

1 readily conceive that the High Command should not have
2 cared for the sort of policy which any re-examination
3 led by him would have resulted in. Once again, in July,
4 Mr. TOGO tried to capitalize on what he thought an
5 opportunity to secure this reconsideration of Japan's
6 China policy by taking up a suggestion brought back
7 from China by former Ambassador OTA which intimated
8 some possibility of a Japan-China peace; but by then
9 the drift was away from the course which he had in
10 mind, for the Greater East Asia Ministry idea, which
11 was to be the immediate cause of his final break with
12 the TOJO Cabinet, was taking form.
13

135. Before coming to that, a few words on
14 Mr. TOGO's attitude toward the "Greater East Asia" idea
15 in general. As his entire career demonstrates, he had
16 never supported any idea of extending Japanese control
17 over the countries of East Asia by force. His outlook
18 had always been that Japan, while considering that a
19 role as "stabilizing force" conferred by her advanced
20 position among the nations of East Asia was a natural
21 one, should approach those nations in a spirit of
22 friendship and equality, assisting their progress and in
23 turn benefitting from it; he had disapproved of the
24

692. Id., (Tr. 35,751).

693. See Exhibit 3609-A, pp. 3, 7, 25 and 26
(Tr. 35,475-84).

Manchuria and China Incidents and so far as his duties
1 and positions permitted had opposed them. Since the
2 "Greater East Asia" policy had been created and adopted
3 before he had come into the office of Foreign Minister,
4 it would be neither extraordinary nor criminal in him
5 to have supported it; which makes it the more interesting
6 that he did not in fact do so, but actually worked to
7 discredit the principles underlying it until his opposi-
8 tion led to his elimination from the government. Even
9 when making a policy speech to the Diet, in the atmos-
10 phere of victory in the early days of war-time (January
11 1942), he stated a concept of "Greater East Asia" by
12 no means precisely orthodox. In that speech he naturally
13 made the expected remarks concerning the success of
14 Japanese arms, the characteristics of the enemy, and
15 Japan's war aims. But he said more: that "Japan also
16 does not fight with a narrow-minded exclusive intention.
17 The idea of the Greater East Asia Co-Prosperity Sphere
18 has not the nature of exclusiveness. Accordingly, it
19 is evident that the relations of economy and communica-
20 tion will be dense between the countries in this sphere
21 and other friendly countries as the establishment of
22 694
23 this sphere makes progress." In my submission this is
24 an extraordinarily bold hint, for a statesman making a
25 694. Ex. 1338-A (Tr. 12,032-33).

war-time speech, and above all for one in Japan of
1 TOJO's war-time, of the desire that cooperation should
2 be extended to even the then enemy nations. It is not
3 difficult, knowing Mr. TOGO's outlook to have been what
4 we have seen it, to believe that he used these words --
5 as well as the stock phrases of the "Co-Prosperity
6 Sphere" -- in a different sense from that of those to
7 whom the Co-Prosperity Sphere had been a slogan behind
8 which to cloak aggression.

9 While we are on the subject of Mr. TOGO's view
10 of Greater East Asia relations, mention might be made
11 of an event of much later -- of the Greater East Asia
12 Ambassador's Conference of April 1945, when Mr. TOGO
13 was newly Foreign Minister again, in the SUZUKI Cabinet.
14 The "Joint Statement" adopted by that conference at the
15 proposal of the Japanese Foreign Minister contains a
16 series of principles for the common development and
17 enjoyment of East Asia to which no possible exception can
18 be taken -- principles not essentially different from
19 those later adopted by the United Nations Conference at
20 San Francisco. ⁶⁹⁵ The continuity of Mr. TOGO's policy
21 toward the nations of East Asia, from 1933 to 1945,
22 is thus interestingly demonstrated.

23
24 695. Ex. 3636 (Tr. 35,579); cf. testimony of TOGO
25 (Tr. 35,764-65).

1 136. It was in part this attitude of Mr. TOGO's
2 toward the Greater East Asia question which led to
3 his parting company with the TOJO government. The
4 Greater East Asia Ministry proposal was the direct cause
5 of the split. This proposal was the final flowering
6 of the militarists' long-developing scheme for control
7 by them of the foreign affairs of Japan, vis-a-vis Asia
8 at least; its aim was to concentrate into the hands of
9 a body under military domination management of all
10 affairs of countries in the "Greater East Asia" area --
11 Manchoukuo, China, Thailand, French Indo-China and 696
12 the rest -- and to accord to them "special treatment."
13 Not least among the reasons for this scheme was the
14 desire to destroy the Foreign Ministry's still-too-
15 moderate policy toward those countries, a desire which
16 to the militarists could only have accumulated more
17 persuasion of urgency from Foreign Minister TOGO's
18 freely-expressed attitude toward the problems of East
19 Asia relations.

20 The plan, first appearing in the spring of 1942,
21 was that chiefly of the Planning Board of the cabinet.
22 By summer it had developed to the point of being
23 probable of realization. Mr. TOGO at that time spoke
24 to Premier TOJO, stating his opposition to the project

696. Testimony of TOGO (Tr. 35,755-56).

on several grounds: that change of administrative
1 structure should not be undertaken in war-time, that
2 the plan's purpose of removing from the Foreign Ministry
3 the essential part of Japan's diplomacy would impair the
4 unity of Japanese diplomacy, and that to treat the coun-
5 tries of East Asia differently from other countries
6 would injure their pride and obstruct cooperation between
7 them and Japan. ⁶⁹⁷ The Premier promised to give the matter
8 careful consideration, but the plan developed exactly
9 in accordance with the original outline, until on
10 29 August the Foreign Minister was suddenly handed a
11 complete draft proposal for establishment of the new
12 Greater East Asia Ministry, with the Premier's ultimatum
13 that he wanted it adopted at the cabinet meeting of
14 1 September. Mr. TOGO again expressed his objection,
15 and urged that consideration of the matter be postponed
16 to allow of more careful study, but was refused, and it
17 did come up for discussion on 1 September. At that
18 meeting the Foreign Minister engaged in a three-hours'
19 debate with the Premier over the propriety of the plan.
20 The arguments which he advanced were again that the
21 creation of a two-headed Japanese diplomacy would render
22 impossible any idea of Japan's having a consistent foreign
23 policy; and that the according to the countries of
24 697. Id., (Tr. 35,755-57).

Greater East Asia of special and different treatment

not only would arouse among them doubts of the true
1 motives of Japan, but was inconsistent with the prin-
2 ciples of real respect for their independence. The pro-
3 posed ministry, he said, was nothing more than an
4 expanded China Affairs Board, which was well known to
5 have been a failure because of its way of exciting the
6 ill-will of the Chinese people. Mr. TOGO was supported
7 by no one, and the cabinet meeting recessed without
8 decision, but with the Premier's suggestion that the
9 Foreign Minister had best resign. This was rejected.
10

11 137. The prosecution assert that Mr. TOGO's
12 testimony (on which he was not cross-examined) "shows
13 that it was not Japan's war aims which he opposed but
14 the method by which Japan's conquests were to be secured."
15 Inasmuch as his objections throughout the period of
16 war had expressed the thought that a genuine respect
17 for the independence of the countries of East Asia was
18 essential, he was pretty clearly opposed to any war aims
19 which ran counter to that principle -- to any aims of
20 subjugation of other countries or of dominating them
21 by force. His war aim had been the preservation of Japan
22 as a nation. I hope that it will never be suggested
23 698. Id., (Tr. 35,757-60); testimony of YUZAWA, Michio
24 (Tr. 35,577-78).
25 699. Summation SWW-40 (Tr. 41,941).

that in his defence I must say that he wished Japan to
1 lose her war; he was of course patriotic, a lover of
2 his country, and of course once a war was under way he
3 hoped and worked for victory. But working for victory
4 is by no means synonymous with approving the incidental
5 war aims of his colleagues, as the evidence just men-
6 tioned makes obvious. Mr. TOGO did, certainly, give
7 as a reason for his opposition to the Greater East Asia
8 Ministry proposal that it would deprive the Foreign
9 Ministry of its jurisdiction to deal with affairs of
10 Asia. This furnishes no support to a contention that
11 he opposed because of, and resigned in a huff over, the
12 curtailment of his powers; the very reason for the
13 militarists' proposing increasing restrictions on the
14 powers of the Foreign Ministry, it must be remembered,
15 had always been that it held overly-liberal attitudes
16 toward foreign countries, to the displeasure of those
17 700
18 militarists. That it was his attachment to these
19 liberal, moderate views, not to his "power," which moti-
20 vated Mr. TOGO's opposition to the latest proposal,
21 there is no reason to doubt. The prosecution, in stating
22 Mr. YAMAMOTO to have testified that "the Foreign Minis-
23 try was not opposed to the purpose for which the Greater
24 700. Tr. 35,747.
25

1 East Asia Ministry was to be set up,"⁷⁰¹ are guilty of
2 again misrepresenting the evidence. Mr. YAMAMOTO made
3 it quite certain that the Foreign Ministry had no
4 objection to the purpose of unification of Asiatic
5 affairs, but objected altogether to those affairs'
6 being taken from the Foreign Ministry, and "contended
7 that the actual carrying out of diplomacy should at all
8 costs be left in the hands of the Foreign Office."⁷⁰²

9 In the end, Mr. TOGO resigned from the cabinet,
10 which immediately thereafter, with General TOJO taking
11 over the portfolio of Foreign Affairs, unanimously
12 adopted the proposal for establishment of the Greater
13 East Asia Ministry. He had at first refused to resign,
14 hoping to be able to force the TOJO Cabinet out of
15 office, and had resisted various blandishments of the
16 militarists that he should reconsider his opposition
17 or should remove himself from the scene. It was finally
18 conveyed to him that the resignation en masse of the
19 TOJO Cabinet was regarded by court circles as undesirable,
20 whereupon on 1 September he resigned individually.⁷⁰³

21 The prosecution's view of this incident is quite unin-
22 telligible:

23
24 701. Summation, SWW-40 (Tr. 41,942).

25 702. Tr. 18,048.

703. Testimony of TOGO (Tr. 35,760-61) and TANAKA
(Tr. 35,544-45).

"The actual circumstances surrounding the
1 resignation of the accused will not be discussed here.
2 It is pointed out, however, that if it were true, as
3 the accused will have us believe, that he strongly desired
4 the overthrow of the TOJO Cabinet, it was entirely
5 within his power to do so. His statement that he
6 finally decided to resign personally, so as not to cause
7 annoyance to the Emperor, can hardly carry much weight
8 704
9 in view of all that had gone before."

Wha' "all that had gone before" may be is not
10 explained; but it is submitted that Mr. TOGO's reason
11 for resigning individually is entirely comprehensible,
12 and that his so doing is in no way inconsistent with
13 his having held the genuine desire to bring about a
14 general resignation. The statement that after learning
15 that "a change of cabinet was not desired by the court
16 . . . I decided to and did tender my resignation, out
17 of a desire not to cause annoyance to the Emperor by
18 705
19 further complicating the matter" can be misunderstood
20 only through that naivete concerning political matters
21 which the prosecution so often demonstrate when it suits
22 their purposes. If the implication of Mr. TOGO's
23 testimony is unclear, see the testimony of TANAKA,
24 704. Summation, SWW-40 (Tr. 41,942).
25 705. Tr. 35,760-61.

Ryukichi, to whom Mr. TOGO conveyed his reasons, for
1 the explanation in words of one syllable:

2 "Nevertheless, Mr. TOGO resigned alone. I
3 asked him the reason when I saw him in the middle of
4 September of that year. His reply was that, although
5 he for his part had fought all he could, he had eventually
6 been compelled to make up his mind to resign alone upon
7 learning from Navy Minister SHIMADA, who had come to
8 see him, that the overthrowing of the cabinet was
9 practically impossible owing to opposition in court
10 706
11 circles."

12 The court did not desire the overthrow of the
13 TOJO cabinet; if Foreign Minister TOGO forced the issue,
14 and attained its overthrow, Premier TOJO would be
15 commissioned to form another, and Mr. TOGO would only
16 have caused annoyance to the Emperor -- that is the
17 situation, in elementary language.

18 THE PRESIDENT: We will adjourn until half-past
19 nine tomorrow morning.

20 (Whereupon, at 1600, an adjournment was
21 taken until Thursday, 15 April 1948, at 0930.)
22
23 - - -
24
25

706. Tr. 35,545, as corrected 12 April 1948.